ANNUAL REPORT

Environmental Review Tribunal

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106-01043/

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Message from the Chair

This Annual Report sets out the activities and progress of the Environmental Review Tribunal for the fiscal year 2004-2005. This has been a year of change and transition. I was honoured to be appointed Chair of the Environmental Review Tribunal on June 1, 2005. I had been appointed Vice-Chair on December 1, 2004.

This Annual Report primarily deals with the term of my predecessor, Ian McPhail Q.C. whose term ended on December 17, 2004. I would like to thank Ian for his leadership, and also thank Knox Henry who was Acting Chair from December 18, 2004 until the end of May 2005. Three Vice-Chairs' terms expired this past fiscal year: Bill Balfour, Pauline Browes and Chris Braney. I would also like to thank them for their contribution to the work of the Tribunal.

The Tribunal's mandate is to conduct fair, efficient and impartial hearings under Ontario environmental legislation and to render decisions consistent with governing legislation in a manner that preserves and protects Ontario's environment. The parties in cases before the Tribunal include individual citizens, community and environmental groups, government ministries and agencies. Appeals range from the very straightforward to the extremely complex. The Tribunal provides a forum where all parties will be heard and their issues adjudicated fairly in the public interest.

We are pleased that we have met and exceeded our performance targets for the scheduling of hearings and the average number of days to render a decision.

We have started a process of updating our Rules of Practice. It is our intention to consult broadly prior to the revised rules being finalized this fall.

The Tribunal continues to improve public access to its information. We have upgraded the search function of the Tribunal's website, to enable easier public access to the decisions of the Tribunal. Our website server has also been upgraded. We are in the process of adding more decisions from our archives to the website, which should also assist those researching our past decisions.

I would like to express my personal thanks to the members and staff who have enabled the Tribunal to fulfill its mandate in a committed and professional fashion.

The Tribunal continues to be faced with many challenging and interesting issues. I am looking forward to stepping up to the plate to meet the challenges of the coming year.

Toby Vigod

Chair

June 28, 2005

The Tribunal's Mandate

The Environmental Review Tribunal was established under the *Environmental Review Tribunal Act, 2000.*

The Tribunal functions as a quasi-judicial tribunal, subject to procedural fairness and the rules of natural justice, the requirements of its governing legislation and the *Statutory Powers Procedure Act*. The Tribunal adjudicates applications and appeals under the following statutes: the *Consolidated Hearings Act,* the *Environmental Assessment Act*, the *Environmental Bill of Rights, 1993,* the *Environmental Protection Act*, *Niagara Escarpment Planning and Development Act, Nutrient Management Act*, *2002,* the *Ontario Water Resources Act*, the *Pesticides Act*, and the *Safe Drinking Water Act.* Although the *Nutrient Management Act, 2002* has been proclaimed, the Tribunal has not yet heard any appeals under this Act. For an overview of the legislation, refer to Appendix A.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints members of the Tribunal as Hearing Officers to conduct hearings. The Hearing Officers make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC") regarding development permit applications. Members of the Tribunal are also appointed by the NEC as Hearing Officers to conduct hearings for the purpose of receiving representations respecting proposed amendments to the Niagara Escarpment Plan ("NEP"). These appointments are made when objections to proposed amendments have been received or for the purpose of periodic review of the NEP.

The Environmental Review Tribunal has the administrative responsibility for the *Consolidated Hearings Act,* which is conducted under the designation of the Office of Consolidated Hearings. Under the authority of the *Consolidated Hearings Act,* a Joint Board can be established in order to eliminate a multiplicity of hearings before different tribunals under various acts on matters relating to the same undertaking. The Joint Board usually consists of members of the Environmental Review Tribunal and the Ontario Municipal Board. The Joint Board is empowered to hold a hearing to consider all of the matters under all of the acts the undertaking is subject to and for which hearings are required.

The principal task of Tribunal members, who are Lieutenant Governor-in-Council appointees, is to conduct fair, efficient and impartial hearings. Tribunal members must consider all the evidence presented, and make decisions (or recommendations) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. For a profile of the Tribunal members, refer to Appendix B.

Core Functions of the Tribunal

The Environmental Review Tribunal has four main functions which are:

1. **Outreach**
2. **Mediation**
3. **Staff Processing of Hearings**
4. **Hearings and Decision-Making**

1. OUTREACH

Passive Component:
The passive component of the Tribunal's outreach function consists of a number of initiatives. The Tribunal has created guides explaining its role and procedures to be distributed as requested. The Tribunal's website provides a wide variety of material which is updated on an ongoing basis. Website users have access to current information regarding the Tribunal, its relevant statutes, Rules of Practice, hearings, including its decisions, orders and forms.

Active Component:
The active component of the Tribunal's outreach function includes staff responses to questions from parties, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. Public information sessions may be held by the Tribunal to inform the public of the hearing process prior to complex hearings or hearings with substantial public interest. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. The Tribunal seeks feedback regarding new policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by submitting the form on the Tribunal's website.

2. MEDIATION

The use of mediation in the hearing process encourages parties to narrow or settle their differences and it often removes the need to proceed to a hearing or may shorten the scheduled hearing days by reducing the number of issues to be adjudicated.

Most of the Tribunal's members have received certified training in mediation. Mediation, generally conducted 30 days before the commencement of a hearing, is offered in all appeal and application hearings before the Tribunal. In all other cases, mediation is provided by the Tribunal, upon request.

3. STAFF PROCESSING OF HEARINGS

The processing of hearings includes all administrative steps necessary to schedule and resolve an appeal/application from the date of filing to the beginning of the hearing. The Tribunal hears

appeals/applications pursuant to nine different statutes. When an appeal/application is received, it is dealt with through one of five different administrative processes. Each process includes:

- screening the appeal/application to assess its compliance with the Act under which it was filed;
- assigning it to the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision.

4. HEARINGS AND DECISION-MAKING

This component, which is the responsibility of the Tribunal members, all of whom are Order-in-Council appointees, includes hearings conducted by members and their written decisions.

All recommendations/decisions made on appeals under the *Niagara Escarpment Planning and Development Act* of development permit applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered no more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the leave to appeal applications under the *Environmental Bill of Rights, 1993* are to be made within 30 days of the filing date of the application, unless the Tribunal determines that, due to unusual circumstances, a longer period is required. In all other types of decisions, Tribunal members have endeavoured to render their decision within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

The Rules of Practice

The Rules, Practice Directions and Guidelines remain open to review and revision as circumstances and new legislation may dictate in order to reflect the changing needs of the Tribunal and the public. The Rules are available on the Tribunal's website or by paper copy, upon request.

In-House Learning Program

The Tribunal has continued to conduct the Learning Program for its members and staff. The Learning Program provides workshops and seminars on environmental issues of relevance to the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers and visitors. The Tribunal extended invitations to other organizations, which included: the Environmental Commissioner's Office, the Ministry of the Environment, the Ministry of Natural Resources and the Niagara Escarpment Commission. For a complete list of the Learning Program's workshops and seminars held in this fiscal year, refer to Appendix C.

Tribunal Activities

Case Type	No. of Unresolved Cases Carried Forward into 04-05 Fiscal Year	No. of New Cases Received in 04-05 Fiscal Year	No. of Cases Resolved in 04-05 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 04-05 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 04-05 Fiscal Year by Other Means*	No. of Cases Carried Forward into 05-06 Fiscal Year	No. of Hearing Days held in 04-05 Fiscal Year**	No. of Hearing Days held on Motions in 04-05 Fiscal Year	No. of Tribunal Days held on mediation in 04-05 Fiscal Year	No. of Tribunal Days held on Public Info Sessions in 04-05 Fiscal Year
ENVIRONMENTAL PROTECTION ACT										
Appeals	39	49	9	3	41	35	57	38	12	1
ONTARIO WATER RESOURCES ACT										
Appeals – all others	15	11	5	0	9	12	44	4	5	0
SAFE DRINKING WATER ACT										
Appeals	3	15	1	0	14	3	9	3	1	0
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT										
Development Permit Appeals	16	74	33	0	40	17	23	6	13	0
Plan Amendment Applications	2	0	1	0	0	1	0	0	0	0
CONSOLIDATED HEARINGS ACT										
Applications	7	5	2	0	4	6	56	0	0	2
ENVIRONMENTAL BILL OF RIGHTS, 1993***										
Leave to Appeal Applications	7	11	15	0	1	2	0	1	0	0
Total	89	165	66	3	109	76	189	52	31	3

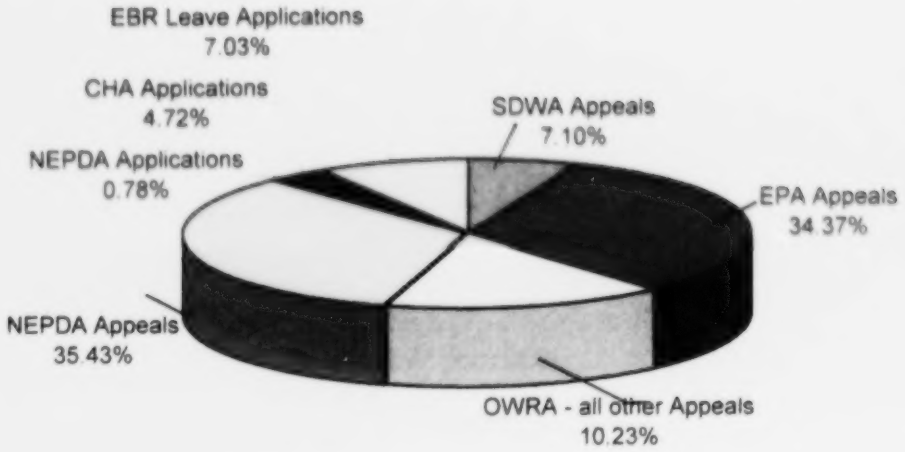
* Withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

** Includes preliminary hearings.

*** Written hearings.

Total Resolved Cases - 2003-2004 vs. 2004-2005
Cases Carried Forward into the next fiscal year
Cases Closed
New Cases
Cases Carried Over from the previous fiscal year
0
50
100
150
200
250
Number of Cases
2003-2004
2004-2005

Total Cases in 2004-2005 by Case Type



Note: There were no applications referred under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Environmental Assessment Act* and no appeals filed under the *Pesticides Act* or the *Nutrient Management Act*.

Consolidated Hearings under the *Consolidated Hearings Act*

The Environmental Review Tribunal has administrative responsibility for the *Consolidated Hearings Act* ("CHA"). This administrative responsibility is conducted under the designation of the Office of Consolidated Hearing. This fiscal year, there were twelve cases, of which seven had been carried forward from the previous fiscal year.

The following table outlines the legislation under which the Joint Board[1] was requested to consolidate.

Case Name and Number	*NEPDA*[2] (Plan Amendment)	*Environmental Protection Act*	*NEPDA*[2] (Development Permit)	*Planning Act*	*Ontario Planning & Development Act*	*Aggregate Resources Act*	*Expropriations Act*
Central Milton Holdings Ltd./665497 Ontario Limited (99-036)	•			•			
Vineland Quarries and Crushed Stone Limited (02-143)	•			•			
Embee Properties Limited et al. (02-244)	•			•	•		
James Overholt (03-065)			•	•			
Dufferin Aggregates, a Division of St. Lawrence Cement Inc. (03-086)	•		•	•		•	
1521160 Ontario Ltd. (Matriarch Developments) (03-209)			•	•			

[1] For further information, refer to The Tribunal's Mandate on page 2 of this report.
[2] *Niagara Escarpment Planning and Development Act*

Case Name and Number	***NEPDA*[2] (Plan Amendment)**	***Environmental Protection Act***	***NEPDA*[2] (Development Permit)**	***Planning Act***	***Ontario Planning & Development Act***	***Aggregate Resources Act***	***Expropriations Act***
Alexander Sanderson (03-224)			•	•			
Hamilton Hydro Inc. (04-016)			•	•			
Hamilton General Homes (04-044)	•			•			
Stephens and Rankin (04-036)	•	•	•				
Hamilton Hydro Inc. (04-060)			•	•			
The Corporation Of the Municipality of Clarington (04-164)				•			•

[2] *Niagara Escarpment Planning and Development Act*

Summaries of Selected Decisions

Consolidated Hearings Act

Vineland Quarries and Crushed Stone Limited

The Joint Board considered a proposal by Vineland Quarries and Crushed Stone Limited ("Proponent") to proceed with an undertaking to expand an existing quarry operation. The Proponent sought an application to the Niagara Escarpment Commission ("NEC") for an amendment to the Niagara Escarpment Plan ("NEP") and filed an appeal with the Ontario Municipal Board regarding an amendment to the Regional Municipality of Niagara Policy Plan. The proposal involved approximately 12.5 million tonnes of aggregate to be recovered from the site.

The Joint Board considered the following issues:

1. the appropriateness of the Official Plan Amendment under the *Planning Act* which re-designated the lands from good general agriculture to possible aggregate area as approved by the Regional Municipality of Niagara; and
2. the appropriateness of the position of the NEC on the proposed NEP amendment application which changes the designation from Escarpment rural area to mineral resource Escarpment area and in conjunction with this change, a change in designation from mineral resource Escarpment area to escarpment protection on other adjacent lands owned by the Proponent should the re-designation of Escarpment rural to mineral resource Escarpment area be approved.

The Joint Board approved the proposal in a decision on August 5, 2003 but, withheld its final Order to await confirmation regarding the implementation of the amendments to the Niagara Escarpment Plan, the Regional Municipality of Niagara Policy Plan, as well as the issuance of a Development Permit and an Aggregate License. After all the aforementioned conditions had been met, on June 14, 2004 the Joint Board issued its final Order.

Decision released: June 14, 2004 (Case No.: 02-143)

James Overholt

The Joint Board considered a proposal regarding the granting of permission under Part VI of the *Planning Act* by the Committee of Adjustment of the City of Thorold to create a lot and the refusal of the Niagara Escarpment Commission to issue a Development Permit with respect to the same land allowing for the construction of a two storey single dwelling with a septic system and accessway. The Niagara Escarpment Commission refused to issue the Development Permit on the grounds that:

1. The proposed lot to be created in conjunction with the residential use does not conform to the New Lots Policy No. 5 for the Escarpment Protection Area designation of the Niagara Escarpment Plan.
2. The proposal does not conform to the Regional Niagara Policy Plan which incorporates the policies of the Niagara Escarpment Plan.

This proposal was refused before a previous Joint Board. James Overholt ("Proponent") appealed the decision of the Joint Board to the Provincial Cabinet. Cabinet approved the proposal with certain conditions. The conditions were not met by the Proponent and the time allowed for satisfying the conditions had lapsed.

Counsel for the Proponent presented a motion requesting a declaration that the Joint Board recognize the previous Cabinet decision as being determinative and that the Cabinet decision be upheld. Thus, no new hearing would be required. Counsel for the Niagara Escarpment Commission ("NEC") argued that since the issuance of Cabinet's decision there had been new policy changes that had been made to the Niagara Escarpment Plan that could affect the outcome of the proposal. Therefore, this matter required a new hearing. The Joint Board agreed with the Counsel for the NEC that a new hearing was required under these circumstances. Counsel for the Proponent appealed the Joint Board's decision to Cabinet. Cabinet agreed with the Joint Board. The Proponent withdrew the proposal, before a new hearing commenced. The Joint Board accepted the withdrawal of the proposal.

Decision released: April 6, 2004, amended Order issued April 15, 2004, subsequent Decision issued February 25, 2005, minor amendment to February 25, 2005 Decision issued May 30, 2005 (Case No.: 03-065)

Environmental Bill of Rights, 1993

Lukasik and Matwiyiw v. Director, Ministry of the Environment

Lynda Lukasik and Zen Matwiyiw ("Applicants") filed for leave to appeal the Director's decision to amend a Certificate of Approval (Air) issued to Hamilton Bio Conservation Inc. ("Hamilton"). The American Water Services Canada Corp. ("AWSC"), the new operating authority, applied for this amendment to the Certificate of Approval (Air) granting approval for the heat drying and pelletization of 250 tonnes per day of municipal biosolids for conversion into fertilizer and a maximum storage capacity of 500 cubic metres. The new process would largely reuse the existing equipment for organic food waste process. The Applicants filed for leave to appeal stating that the proposed amendment allowed for the creation of a new use namely, the processing of sewage sludge. The Applicants stated that the processing of sewage sludge brought with it new potential impacts on the environment and nearby neighbourhoods. The Applicants were particularly concerned with the risks of odour impacts and the potential for the emission of contaminants from the facility stack. As sewage sludge is far more odorous than food waste and there is a risk that there could be discharge into the air of contaminants found in

sewage sludge, the Applicants expressed concern that there was also not an amendment made to the Certificate of Approval (Air) issued to the facility.

The Tribunal concluded that issues related to an odour unit limit proposed by the Applicants as a possible amendment to the Certificate of Approval (Air) were beyond the scope of this appeal. The Tribunal however, granted leave to appeal to the Applicants stating that the Applicants had met both parts of the leave to appeal test outlined in section 41 of the *Environmental Bill of Rights*. According to the Tribunal, there was good reason to believe that no reasonable person having regard to the relevant law and governmental policies would have granted an amendment to the waste management Certificate of Approval (Air) prior to considering the need to make any amendments to the facility's Certificate of Approval (Air) regarding air quality. Also, the Tribunal concluded that the Ministry of the Environment's failure to consider amendments to the Certificate of Approval (Air) has resulted in a failure to address the Applicants concerns relating to the potential odour and contaminant emissions from the site. According to the Tribunal, with the preceding fact in mind, there existed a real chance that the environment could sustain significant harm if an amendment to the Certificate of Approval (Air) were granted.

Decision released: May 7, 2004 (Case Nos.: 03-142 and 03-145)

Wyldewood Road Ratepayers Association v. Ministry of the Environment

Wyldewood Road Ratepayers Association ("Applicant") filed for leave to appeal the decision of the Director to issue a Sewage Works Certificate of Approval to Aston Resort Hotel ("Instrument Holder"). The Certificate of Approval allowed for the installation of a secondary biological treatment plant and tertiary filtration to permit a 22-unit expansion of accommodation at the resort and provide an additional daily flow allowance for future growth. The Applicant was not allowed to file for leave to appeal as the Applicant filed beyond the 15 day timeline allowed for filing an application for leave to appeal as directed by section 40 of the *Environmental Bill Of Rights*.

Decision released: June 17, 2004 (Case No.: 04-028)

Township of Muskoka Lakes Ratepayers' Association and Muskoka Lakes Association v. Director, Ministry of the Environment

The Township of Muskoka Lakes Ratepayers' Association and the Muskoka Lakes Association ("Applicants") each filed an application for leave to appeal the Director's decision to issue a Sewage Works Certificate of Approval to Aston Resort Hotel ("Instrument Holder"). The Certificate of Approval allowed for the installation of a secondary biological treatment plant and tertiary filtration to permit a 22-unit expansion of accommodation at the resort and provide an additional daily flow allowance for future growth. The Applicants objected to the establishment of a system where the treated effluent was to be discharged directly into Lake Muskoka, 60m offshore, from a diffuser pipe on the lake bottom. The Tribunal denied the leave to appeal applications on the basis that the Applicants failed to meet the first part of the leave to appeal test outlined in section 41 of the *Environmental Bill of Rights*. The Tribunal concluded that the

Applicants did not present any data on the water quality of Lake Muskoka in general or on the specific site where the effluent from the proposed plant will be discharged. Also, the Applicants did not suggest that the system as it is designed will fail to meet the criteria that is currently applicable to Lake Muskoka. There was also no evidence presented to show that the Ministry of the Environment's proposal to issue a sewage works Certificate of Approval could result in risks to human or ecological health.

Decision released: July 29, 2004 (Case Nos.: 04-025 and 04-027)

Sizeland-Ross v. Director, Ministry of the Environment

A leave to appeal application was filed by Lisa Sizeland-Ross ("Applicant") pursuant to section 38 of the *Environmental Bill of Rights*. Mutual Resource Recovery S.R.B.P. Inc. ("Instrument Holder") is a waste processing facility that had been granted an amendment to its Certificate of Approval regarding the expansion of a building, thus allowing for the storage of a maximum of 600 tonnes of PCB-contaminated soil, concrete, wood and metal. The Applicant filed for leave to appeal on the following grounds:

1. possible operation of the facility at full capacity
2. unreasonable storage (enclosed and temporary), transportation (does not deal with the increase in traffic volume), and emission limits
3. the present decision did not consider increased dangers to the community and the environment
4. there was no consideration of the health and environmental concerns related to daily capacity. All that was considered was annual caps
5. the possible affect the decision could have on a new high school to be constructed downwind from the facility.

The Tribunal concluded that the Applicant failed to provide any evidence to support the above grounds and therefore, leave to appeal was denied as the Applicant failed to meet the leave to appeal test outlined in section 41 of the *Environmental Bill of Rights*.

Decision released: August 16, 2004 (Case No.: 04-040)

Waring's Creek Improvement Association and Safe Water Group of Prince Edward County v. Director, Ministry of the Environment

Waring's Creek Improvement Association and the Safe Water Group of Prince Edward County ("Applicants") filed a leave to appeal application pursuant to section 38 of the *Environmental Bill of Rights*. Amos Earth Products Limited ("Instrument Holder") was issued a Permit to Take Water pursuant to section 34 of the *Ontario Water Resources Act* for the purpose of conducting aggregate washing. The Applicants applied for leave to appeal due to concern with preserving the water levels in Waring's Creek. Leave to appeal was denied as the Applicants failed to meet the leave to appeal test outlined in section 41 of the *Environmental Bill of Rights*.

The Tribunal was provided with documentary evidence indicating that the Ministry of the Environment staff conducted a thorough scientific review of the water-taking and had concluded that the water-taking is anticipated to have no significant impact on the ground and surface water. The Ministry of the Environment's technical review concluded that the watercourse and wetland are unlikely, due to distance, to be impacted by turbidity and temperature changes at the Amos quarry. The revised Permit To Take Water included new monitoring conditions that would promote compliance with the permit conditions and provide an early warning should any possible impacts result from the water taking by Amos. The Tribunal stated that the Applicants did not provide any real evidence to support their allegations. They submitted a general groundwater study for the entire Quinte watershed that simply identified the esker aquifer as sensitive.

Decision released: August 31, 2004 (Case Nos.: 04-055 and 04-056)

John Rocchi v. Director, Ministry of the Environment

John Rocchi ("Applicant") filed for leave to appeal a decision of the Director granting a Certificate of Approval to Nexcycle Plastics ("Instrument Holder") for a waste disposal site for receipt, processing, temporary storage and transfer of certain types of waste. The Applicant claimed that he was representing several other local waste facility owners who wished to be unidentified. The Tribunal only could identify the Applicant's interest in this matter and therefore only recognized the Applicant as a party to this application.

The Applicant claimed that two conditions that were in the issued permit were not originally posted for comment. This fact was the basis for the Applicant's leave to appeal application. In considering this matter, the Tribunal looked at sections 22 (1) and 36 (2) of the *Environmental Bill of Rights*. After examining the words "a proposal for an instrument in respect of which notice was given" present in section 36 (2), the Tribunal concluded that the posting of the decision should not have included conditions that were not previously posted for comment. Consequently, the Tribunal ruled that the Applicant had satisfied the first part of the test for leave to appeal outlined in section 41 of the *Environmental Bill of Rights*. However, as the Applicant did not make submissions with regard to the second part of the leave to appeal test as outlined in section 41 of the *Environmental Bill of Rights*, the Tribunal denied leave to appeal. The Tribunal also recommended that when major changes are contemplated to proposals after review by the Ministry of the Environment these revised proposals should be posted on the registry.

Decision released: October 8, 2004 (Case No.: 04-078)

Hasson v. Director, Ministry of the Environment

Jim Hasson ("Applicant") filed for leave to appeal the decision of the Director to renew a Permit to Take Water to Terra International (Canada) Inc. ("Instrument Holder"), allowing the taking of 228,940,992 litres per day for 5-10 years. The water was to be used for process cooling, steam generation, air conditioning, utility water and fire supply and then discharged back into the St.

Clair River. The Applicant applied for leave to appeal due to concern regarding the effects this system would have to downstream residents and the ecosystem. The Tribunal denied the application for leave to appeal, as the Applicant did not provide any evidence solemnly affirmed to meet either test outlined in section 41 of the *Environmental Bill of Rights.*

Decision released: October 13, 2004 (Case No.: 04-083)

Lacombe Waste Services Limited v. Director, Ministry of the Environment

Lacombe Waste Services ("Applicant") filed for leave to appeal the Director's decision to issue an amended Provisional Certificate of Approval ("CofA") to Waste Care Services ("Instrument Holder") for the operation of a waste disposal site (processing/transfer). The Certificate of Approval was amended to include the transferring and processing of three additional waste classes. The disposal processes to be used were to include oil filter processing and bulking and blending of approved waste classes. The Certificate of Approval also sought an expansion of the operating hours.

The Applicants raised the following grounds for leave to appeal:

1. The Certificate of Approval does not meet the requirements or conditions that are currently obligatory for most waste transfer stations' Certificates of Approval in Ontario and, therefore, provide Waste Care with an unfair economic advantage.
2. Condition 19(a) of the Certificate of Approval is inconsistent as it specifies that all operations on the site be performed indoors and yet it allows for storage outdoors. Condition 19(a) should be amended to specify that the storage tank and containers be placed indoors.
3. The monitoring conditions contained in condition 16(b) of the Certificate of Approval should have been amended to account for the addition of new waste classes and should require the inspection and testing of all incoming and outgoing waste by qualified personnel.

The Tribunal concluded that in accordance with previous Tribunal decisions, the section 41 test in the *Environmental Bill of Rights,* while a stringent test, has a lower standard of proof than "on the balance of probabilities." The Tribunal then denied leave to appeal concluding that on all three grounds the Applicant failed to provide evidence to satisfy both parts of the test for leave to appeal outlined in section 41 of the *Environmental Bill of Rights.* With regard to ground 1, the Tribunal concluded that there are no obligatory conditions or requirements for waste transfer stations' certificates of approval in Ontario. The Applicant did not outline any obligatory conditions. The Applicant and the Instrument Holder processed different types of waste and may have differences in site specific conditions. The Tribunal found that each application for a certificate of approval should be evaluated on its own merit. This process is in keeping with the scheme and purpose of the *Environmental Protection Act.* Also, an application on the sole basis of economic advantage and competitiveness does not on its own meet the second part of the section 41 test as the definition of environment refers only to the natural environment and does not include social, economic or cultural considerations.

With regard to ground 2, the Tribunal concluded that condition 19(a) of the CofA was not inconsistent as it clearly stated that what must take place indoors are all operations involved in the processing of the approved wastes, including loading and unloading. Activities associated with tire processing can take place outdoors. After considering the various safeguards to be applied to this outdoor storage, the Tribunal concluded that there was not "a substantial and relevant information base" to conclude that the outdoor storage could result in significant harm to the environment.

With regard to ground 3, the Tribunal found that there was no requirement for the imposition of standard or identical conditions in C'sofA for waste disposal sites. The Applicant had a much larger facility and was approved to process and receive a significant amount of additional waste classes, including hazardous wastes. The Applicant failed to meet the first part of the section 41 test. The Tribunal also stated that there was no evidence filed to meet the second part of the section 41 test.

Decision released: March 21, 2005 (Case No.: 04-148)

Environmental Protection Act

Angelo Menegotto v. Director, Ministry of the Environment

In deciding an early motion, the Tribunal issued an Order ruling that it had jurisdiction to hear the appeal in this case, although Angelo Menegotto ("Appellant") had missed the seven-day deadline necessary for a Director to review a Provincial Officer's Order under section 141 of the *Environmental Protection Act*. Several months later, the Director made a motion submitting that the Tribunal did not have jurisdiction in this matter and asked that the Tribunal consider once again the same matter that was decided on the earlier motion. The Tribunal concluded that as the Tribunal had no reconsideration rule, the Tribunal could not deal again with the issue regarding whether or not it had jurisdiction in this matter. The Tribunal proceeded to schedule the matter for a Hearing. The Ministry applied for a Judicial Review of the Order. This matter is currently before Divisional Court.

Order released: April 6, 2004 (Case No.: 02-013)

Philip Services Inc. (Taro Landfill) v. Director, Ministry of the Environment

Philip Services Inc. (Taro Landfill) ("Appellant") appealed several conditions in the amended Provisional Certificate of Approval for the Taro Landfill site issued by the Director, Ministry of the Environment. At the Preliminary Hearing of the re-hearing, counsel for PSC Industrial Services Canada Inc. (PSC), a party to the matter, informed the Tribunal that the Appellant had declared bankruptcy and would not be at the hearing. PSC, as the new owner of the subject property, took no issue with the current certificate of approval and indicated that it did not wish to continue with the hearing. The Director consented to the termination of the hearing. With no

objection from the other parties and with no public interest being adversely effected, the Tribunal terminated the hearing.

Decision released: April 8, 2004 (Case No.: 02-132)

Carsmetics Inc. v. Director, Ministry of the Environment

This case involved the appeal of an Order by Carsmetics Inc. and Jim Finley ("Appellants") issued by a Provincial Officer under section 157 of the *Environmental Protection Act* and confirmed by the Director under section 157.3(5) of the *Environmental Protection Act* regarding a mobile spray painting unit. The matter was decided on a motion brought by the Appellants, asking to have the Order declared invalid as it did not comply with the mandatory provisions of section 157 of the *Environmental Protection Act*.

The Tribunal declared the Order to be invalid. Section 157(2) of the *Environmental Protection Act* states that an order shall "specify the provision, term or condition that the Provincial Officer believes is being or has been contravened" and "briefly describe the nature and where applicable, the location of the contravention." The Order did not include the proper information to bring the Order in compliance with section 157(2) of the *Environmental Protection Act*. While the Provincial Officer's Report did contain the necessary information for compliance with section 157(2) of the *Environmental Protection Act,* the Provincial Officer's Report, according to the Tribunal, did not form part of the Provincial Officer's Order. The Tribunal concluded that for the Provincial Officer's Order to meet the mandatory requirements of section 157 of the *Environmental Protection Act*, the Provincial Officer's Report had to be incorporated by reference into the Provincial Officer's Order or the requirements had to be stated directly in the Provincial Officer's Order.

Decision released: April 29, 2004 (Case No.: 03-137)

Temple Pembroke Inc. v. Director, Ministry of Environment

An Appeal was filed by Temple Pembroke Inc. ("Appellant") regarding the Director's decision to issue an amended Certificate of Approval (Air) dealing with a facility that manufactures medium density fibreboard. After many Preliminary Hearings and Hearing days, the remaining issues were the conditions regarding the compliance with the Ministry of the Environment's requirement of 1000 degrees C for one second in the wood combustor, and the issue of plant capacity. The Parties reached consensus and a newly drafted Certificate of Approval (Air) was presented to the Tribunal. A Hearing was held to allow the public to comment on the proposed changes and to allow the Tribunal to consider the merits of the change. The Tribunal accepted the draft and ordered the Director to issue the new Certificate of Approval (Air).

Decision released: February 16, 2005 (Case No.: 02-164)

Environmental Protection Act and Ontario Water Resources Act

Exolon-Esk Company of Canada Ltd. et al v. Director, Ministry of the Environment

This case involved the issuance of what was claimed to be a preventative measures order issued under section 157.1 of the *Environmental Protection Act* ("*EPA*") and section 16.1 of the *Ontario Water Resources Act* ("*OWRA*").

The Tribunal considered two major issues in this appeal: the clarity of the Order and whether or not the Order complied with the requirements of section 157.1 of the *EPA* and section 16.1 of the *OWRA*. The Tribunal ruled on the first issue stating that the Order did not give clear direction to the Appellant regarding the measures to be taken to comply with the Order. The Tribunal concluded that this situation was highly inappropriate.

Both parties agreed that the only possible sections that the Order could have been issued pursuant to was section 157.1 of the *EPA* or section 16.1 of the *OWRA*. The Tribunal concluded that the Order was invalid due to the Order's failure to comply with the mandatory requirement, present in both sections 157.1 of the *EPA* and 16.1 of the *OWRA*, that the Order state the circumstances on which the reasons for the Order are based. While the Provincial Officer's Report did state the circumstances on which the reasons for the Order were based, the Provincial Officer's Report, according to the Tribunal, did not form part of the Provincial Officer's Order. The Tribunal concluded that the Provincial Officer had to either incorporate by reference the Provincial Officer's Report into the Provincial Officer's Order or simply state the circumstances in the Provincial Officer's Order.

Decision released: April 26, 2004 (Case No.: 02-082)

Niagara Escarpment Planning and Development Act

Niagara Escarpment Plan Amendment PC 139 (Campden)

This matter dealt with proposed Amendment Number 139 to the Niagara Escarpment Plan ("Plan") to add a 9.63 hectare portion of land north of the Hamlet of Campden to the Niagara Escarpment Plan. The Hearing Officers concluded that Amendment 139 should be approved thus, allowing the subject lands to be admitted into the Niagara Escarpment Plan. The Hearing Officers concluded that allowing the subject lands to be admitted into the Niagara Escarpment Plan would provide the maximum amount of protection against any new development, for the subject lands. The Hearing Officers recommended to the Niagara Escarpment Commission, pursuant to section 10 of the *Niagara Escarpment Planning and Development Act*, that Plan Amendment 139 be approved and the subject lands be included in the Niagara Escarpment Plan with the designation of Escarpment Rural Area.

Decision released: April 29, 2004 (Case No.: 03-056)

Olsthoorn v. Niagara Escarpment Commission

Joyce Olsthoorn ("Appellant") filed an appeal of the Niagara Escarpment Commission's decision to conditionally approve a request for a development permit made by Pamela Hoey ("Applicant"). The development permit allowed for the operation of an aesthetics, acupuncture and healing services business within an existing single dwelling and to allow an advertising sign. The advertising sign was the focus of much concern at the Hearing. The Hearing Officers confirmed the decision of the Niagara Escarpment Commission pursuant to section 25 (12) of the *Niagara Escarpment Planning and Development Act*.

The Hearing Officers concluded that there was insufficient reason to recommend an alteration to the decision of the Niagara Escarpment Commission. An examination of the proposal by the Niagara Escarpment Commission staff determined that the development permit application complies with the policies of the Niagara Escarpment Plan, and would not conflict with the Town's Official Plan and proposed Zoning By-law provisions. After the Hearing Officers viewed an example of the sign at the Hearing and attended a site visit to observe where the sign would be placed, the Hearing Officers had no concern with regards to safety issues or visual and aesthetic effects.

Decision released: July 14, 2004 (Case No.: 04-003)

Hutchison v. Niagara Escarpment Commission

Gina Hutchison ("Appellant/Applicant") filed an appeal of the Niagara Escarpment Commission's decision to refuse granting a development permit recognizing the operation of a yoga and pilates instruction studio within a portion of an existing attached garage. Pursuant to section 2.2(10)(1) of the Niagara Escarpment Plan "municipal official plan policies and standards for a home business must be met." As the operation of this home business did not conform to either the Halton Region Official Plan nor the City of Burlington Official Plan the Hearing Officer confirmed the decision of the Niagara Escarpment Commission pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*.

Decision released: August 31, 2004 (Case No.: 04-015)

Schild v. Niagara Escarpment Commission

Doug and Christine Schild ("Appellants/Applicants") filed an appeal of the decision of the Niagara Escarpment Commission ("NEC") in which the NEC refused to issue a development permit to recognize the use of the existing detached garage as a second residence (in-law suite). The Appellants/Applicants had moved Christine Schild's parents, who were unwell, into the garage/residence to live out their final years.

The Appellants/Applicants made submissions in this case regarding the interpretation of section 25(4) of the *Niagara Escarpment Planning and Development Act* ("NEPDA"). Both Parties

agreed that section 25(4) did allow the NEC to exercise discretion when granting a development permit. At issue was the extent of the discretion allowed by the section. The Appellants/Applicants submitted that the NEC's discretion need only be consistent with the purposes and objectives of the Niagara Escarpment Plan ("NEP") and the NEPDA and not with specific planning provisions such as restrictions related to second residences. The purposes and objectives of the NEP speak in general terms to the maintenance of the Niagara Escarpment substantially as a continuous natural environment and to ensure that only such development occurs as is compatible with the natural environment. Therefore, according to the Appellants/Applicants, there is nothing in section 25 (4) requiring that a Party seeking discretion must first establish that there is a planning basis to the request.

The NEC submitted that section 25(4) of the NEPDA requires that NEC decisions be in accordance with the NEP. The second residence is not a permitted use under the NEP. The NEC also cited other concerns regarding the granting of a development permit. Those concerns were:

1. A concern over precedent
2. A concern over cumulative impacts-increased population density by way of approval of such habitation use
3. If the application is approved, it could facilitate a severance under the NEP, thereby exceeding the otherwise allowable maximum lot density to further fragment the NEP area

The NEC relied on a number of cases to support the contention that compassionate grounds, regarding the health of the parents, are inadequate as a basis for the granting of a development permit in the absence of a planning basis for a development permit.

The Hearing Officers concluded that the Appellants/Applicants offered insufficient reason to alter the decision of the NEC. The Hearing Officers confirmed the decision of the Niagara Escarpment Commission pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*.

Decision released: September 1, 2004 (Case No.: 03-213)

Hatcher et al. v. Niagara Escarpment Commission

Peter and Fran Hatcher, Russell Rediker, Stewart and Audrey White, Mr. and Mrs. E.C. Pease, Roger and Lorraine Jeens, Kevin and Linda Kent, Jeff and Jennifer Wood, Bohdan and Christine Myroniw and Suzanne and Mark Pratley ("Appellents") filed an appeal of the Niagara Escarpment Commission's decision to conditionally approve an application for a development permit to Kerry Richards ("Applicant"). The development permit allowed for a recreational/commercial aquaculture (catch and release fishing business) in an existing lot allowing for a fishing pond, pond deck, use of existing public washrooms, car parking lot with internal roads and a proposed sign at the driveway entrance. The Parties reached a consensus on the outstanding issues and agreed to five additional conditions to be added to the development permit.

The Hearing Officer conditionally approved the development permit pursuant to section 25(12.1) of the *Niagara Escarpment Planning and Development Act* with the original twelve conditions, five additional conditions and a new site plan.

Decision released: November 19, 2004 (Case Nos.: 04-081, 04-082, 04-084, 04-085, 04-086, 04-087, 04-088, 04-089, 04-090 and 04-091)

Muysson v. Niagara Escarpment Commission

Charles and Kristy Muysson ("Appellants") filed an appeal of the Niagara Escarpment Commission's ("NEC") decision to approve an application for a development permit made by Quinter Gordon ("Applicant"). The development allowed for the construction of two 1-2 story single dwellings with driveways on two proposed lots. The Appellants objected to the proposed size of the house. The house was much larger than the homes in the surrounding neighbourhood and consequently the land space on the lot would be significantly reduced from the land space present on the surrounding lots. The Appellants objected to the fact that this house would not conform to the other houses in the immediate surrounding neighbourhood. The Niagara Escarpment Commission stated that while this house did not conform to the other homes in the immediate neighbourhood, its size would still be allowed under the Niagara Escarpment Plan and nearby homes, on the Niagara Escarpment, were of the same size as that of the proposed house. According to the NEC, homes did not have to conform to the size of the other homes in their immediate neighborhood. The Hearing Officer heard evidence on the following two issues:

1. Is the proposed home size appropriate?
2. Is the size of the side yards of the proposed homes suitable?

As the proposal complied with the Niagara Escarpment Plan, the Hearing Officer confirmed the NEC's decision to approve a development permit application pursuant to section 25 (12) of the *Niagara Escarpment Planning and Development Act.*

Decision released: November 26, 2004 (Case No.: 04-075)

Paletta International Corporation, Couch, Wydryk and Ford v. Niagara Escarpment Commission

Paletta International Corporation (the developer of residential housing on land connected to the subject property by a common road), Betty Jayne Wydryk, Denice Couch and Rich and Diana Ford ("Appellants") filed appeals regarding the Niagara Escarpment Commission's ("NEC") decision to conditionally approve a development permit application filed by Malcolm and Thelma Gissing ("Applicants"). The development permit allowed for the construction of a maximum 2-storey single dwelling with a walkout basement, attached garage, rear deck, swimming pool, septic system, cistern and driveway on each of two lots. The Hearing Officers heard evidence on the following three issues:

1. Does the ground water resource cause sufficient concern to either turn down the application or to alter the proposed lot size for the development?
2. Should a condition be included that strengthens the requirement for the Applicants to prevent surface water from draining onto neighboring property?
3. Should a condition be included that requires the Applicants to compensate Paletta for a portion of the cost of the road in front of the Applicant's property?

After concluding that the issue regarding compensation for use of the road was not within the jurisdiction of the Niagara Escarpment Hearing Office, the Hearing Officers pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act* confirmed the decision of the NEC. The Hearing Officers concluded that there was not enough evidence presented to show that the steps taken by the City of Burlington and the Region of Halton were inadequate to protect the water resource. With regard to surface water reaching the surrounding neighbours' properties, a further conclusion was made by the Hearing Officers that the efforts of the Engineering Department of the City of Hamilton regarding contours and the grading of the development offered adequate protection to the surrounding neighbours.

Decision released: December 6, 2004 (Case Nos.: 04-054, 04-057, 04-061 and 04-062)

Indovino v. Niagara Escarpment Commission

Corrado and Jacqueline Indovino ("Appellants") filed an appeal regarding the Niagara Escarpment Commission's decision to conditionally approve a request for a development permit made by Fernando Da Silva ("Applicant"). The development permit allowed for the construction of a two-storey dwelling, a private sewage disposal system, and a driveway. The Niagara Escarpment Commission corresponded with the Niagara Escarpment Hearing Office requesting that the appeal be dismissed pursuant to section 25(8.1) of the *Niagara Escarpment Planning and Development Act*. The Hearing Officer contacted the parties requesting written submissions in order to decide the issue of dismissal. As the Appellants did not respond to the Hearing Officer's request, the Hearing Officer dismissed the appeal pursuant to section 25(8.1) of the *Niagara Escarpment Planning and Development Act*.

Decision released: March 7, 2005 (Case No.: 04-134)

Johnson v. Niagara Escarpment Commission

Jim and Pam Johnson ("Appellants") filed an appeal of the decision of the Niagara Escarpment Commission ("NEC") to conditionally approve a development permit application filed by Bryce Ivanchuck ("Applicant"). The development permit directed the development of a draft plan of subdivision proposing 2 new streets, a Block for a stormwater management pond, and 39 single dwellings on lots with associated full municipal services. The Applicant made a motion to dismiss the appeal pursuant to section 25(8.1) of the *Niagara Escarpment Planning and Development Act*. The Hearing Officer, after hearing submissions, was told by the Appellant that he and the Applicant had settled all outstanding issues and, therefore, the Appellant was withdrawing his appeal. The Hearing Officer dismissed the appeal. The Hearing Officer also

confirmed the decision of the NEC pursuant to section 25(12) of the *Niagara Escarpment Planning and Development Act*.

Decision released: March 18, 2005 (Case No.: 04-144)

Ontario Water Resources Act

Upper Canada District School Board v. Director, Ministry of the Environment

The Upper Canada District School Board ("Appellant") appealed a Provincial Officer's Order, confirmed by the Director, requiring the School Board to supply potable water to certain residences until the existing well was no longer impacted by the sewage system. After discussion and agreement between the parties the Tribunal amended the Director's Order. While still requiring the Appellant to supply potable water, the new Order also required the Appellant to construct a new well with all the necessary conditions that would allow for a new supply of potable water to be provided to the residences.

Decision released: November 15, 2004 (Case No.: 03-190)

Summaries of Appeals of Decisions of the Tribunal

Inco v. Director, Ministry of the Environment

Inco Limited ("Appellant") had filed with the Tribunal an appeal against the Director's decision to issue a Certificate of Approval regarding the collection of mine water, mine seepage and storm water runoff from the Totten Mine Shaft No.2 and a wastewater treatment plant located at Totten Mine. The Tribunal, on a motion brought by the Appellant ruled that the Director could not impose effluent parameters more restrictive than what is allowed by regulation 560/94 ("Regulation"). The Director appealed this decision to the Divisional Court. In applying a standard of review of correctness, the panel rejected the Tribunal's reasoning stating that: the draft development document for the program of which the Regulation was a part allowed the Director to impose more strict site-specific flow limits; the Tribunal erred in interpreting section 4 of the Regulation; and the Tribunal erred when concluding that allowing the Director to impose stricter limitations would usurp the power of the Lieutenant Governor of Ontario.

The panel further stated that the Director can impose stricter effluent parameters if the Director is acting in the public interest. This matter was remitted to the Tribunal for a hearing on its merits. The Tribunal is currently in the process of re-hearing the matter.

Decision released: December 1, 2003 (Case No.: 02-094)
Divisional Court decision released: October 6, 2004 (Court File No.: DV-628-04)

Jane Miller Montague and Donald Lee v. Director, Ministry of the Environment

The Director applied for a Judicial Review of the Environmental Review Tribunal's decision to overturn its order against Jane Miller Montague and Donald Lee ("Appellants"). In 2001, the Director ordered a cleanup of a site found to have 80 drums of paint chemicals buried in the property since 1978. Mrs. Montague was the current owner of the property and Mr. Lee was a director of Lee Paint, the company that owned the property in 1978 when the drums were buried. The Tribunal overturned the issuance of an Order against Mrs. Montague on the issue of fairness and against Mr. Lee on the basis that, although he was a director of the corporation, he was not the controlling mind of the corporation.

On Judicial Review, the panel, in applying a standard of correctness, ruled in favour of the Tribunal's decision with regard to Mrs. Montague. With regard to Mr. Lee, the panel sent the matter back to the Tribunal to be reheard. The panel directed the Tribunal to have consideration of the fact that Mr. Lee, while not the controlling mind of the company, did have control over the waste and the cleanup operation. This fact has significance under the enabling legislation.

The Tribunal is currently in the process of re-hearing the matter.

Decision released: January 6, 2004 (Case Nos.: 02-179 and 02-188)
Divisional Court decision released: March 1, 2005 (Court File No.: 04-168-DV)

Report on Performance Measures
Fiscal Year 2004-2005

For fiscal year 2004-2005, the Environmental Review Tribunal ("Tribunal") adopted nine goals as critical to effective and efficient performance and service quality in its main functions of Outreach, Mediation, Staff Processing of Hearings, and Hearings and Decision Making.

In this fiscal year, the Tribunal met or exceeded the performance measures in eight out of nine targeted areas. For Key Performance Goals and Objectives for the next fiscal year 2005-2006 refer to Appendix D.

Commitment #1: Public Education and Information Sessions

"Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process."

Over the past few years, the Tribunal assessed the cases that were complex and had public interest. The level of public interest was determined during a staff conference with the parties. The Tribunal determined that it was essential for public participation and awareness to offer the services of information sessions prior to the commencement of the main hearing of evidence where there was a large public interest. These information sessions educate the public on how they can participate in the hearing process.

The Tribunal developed a protocol to effectively identify when public information sessions should be held and how they should be conducted. PowerPoint presentations were developed and presented by staff at public information sessions prior to the commencement of the formal hearing. Notice of these events was advertised in local area newspapers. This fiscal year, the Tribunal conducted three public information sessions. At the outset, the three cases appeared to have a large public interest. Although, the Tribunal relies on information from the parties to determine whether or not a public information session will be required, it is often difficult to determine this prior to the commencement of a hearing. In two out of the three hearings, only the parties attended the public information sessions. The Tribunal needs to re-assess its commitment to providing public information sessions for the next fiscal year. Often when a hearing is held where no public information session was conducted and there is a large public interest, the Tribunal Member will explain to the public the avenues for participation in the hearing process.

Commitment #2: Website Access

"The Tribunal will use its website to communicate with its clients."

The public has embraced the website as the primary way to access information about the Tribunal and its processes. From April 1, 2004 to March 31, 2005, the Tribunal had a total of

18,855 visitors to its site and a total of 647,471 "hits" on specific pages in the site. One decision of the Tribunal was downloaded over 2,000 times. The Tribunal's Annual Reports were downloaded over 2,500 times. Copies of the Tribunal's Rules of Practice and Guides were also downloaded over 1,000 times. During the year there were 78,929 separate downloads of documents from its website, including over 68,000 downloads of Tribunal decisions and orders. "Webtrends" is used to monitor the Tribunal's statistics. For a list of the most popular downloads, refer to Appendix E.

The staff update the website three to five times weekly. With the exception of a few hours each month for website maintenance and unforeseen disruptions, the website is available at all times. If the gateway for the Ontario Government is not in service, the Tribunal's website would not be operational.

The Tribunal continues to ensure that the public has access to the most current documents available. Rules of Practice, Practice Directions and Guidelines, as well as the current published Annual Report, Business Plan and Guides are posted.

During the last fiscal year, the Tribunal installed a new server which was configured to host the Tribunal website. This new server provides better performance to the public during accessing, viewing or downloading information from the site. The search engine on the website has also been re-configured which will provide the public with faster access to decisions and orders of the Tribunal.

Commitment #3: Guides

"Guides will be updated."

During the 2004-2005 fiscal year, the Tribunal updated two of its Guides. In "A Guide to Development Permit Appeal Hearings and Plan Amendment Application Hearings under the "*Niagara Escarpment Planning and Development Act*", a clarification was made to the section which deals with the persons who can appeal a development permit application. A clarification was also made to "A Guide to Applications for Leave to Appeal under the Environmental Bill of Rights, 1993" in that the decision rendered by the Tribunal would only address the granting of leave to appeal applications and not the merits of the case.

These changes will assist the public to better understand the legislated requirements that are part of the hearing process for these types of appeals.

Commitment #4: Mediation Services

"Offer mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing."

Mediation services are available to all parties in matters before the Tribunal. The Tribunal formally offers these services in every appeal (except in matters filed under the *Niagara*

Escarpment Planning and Development Act) and, upon request, in all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in mediations during the hearing process in 33 cases compared to 39 and 72 cases, respectively, in the last two fiscal years. Of the 33 cases where mediation services were held, 9 cases were withdrawn; 21 cases progressed to a full hearing of evidence and three cases were still ongoing as of March 31, 2005. The number of appeals withdrawn or instruments revoked may well overstate the success of the mediation process. However, on the other hand, mediation may have helped to resolve some issues and to narrow the scope of the hearing, in many cases that continued to a full hearing.

Senior staff and Tribunal members who conducted mediation sessions were certified through an accredited course.

All participants in each mediation session were sent a questionnaire that included questions on their level of satisfaction with the mediation process and the Tribunal's involvement. Of the responses received, 74% expressed overall satisfaction with the mediation process.

Commitment #5: Timeliness in Scheduling Hearings

"Improve the timeliness in scheduling hearings."

The Tribunal adopted a 30 calendar day timeliness standard to issue a Notice of Hearing on appeals, starting on the day on which the appeal/application is received. The Tribunal met the timeframe, as the average time to issue the Notice of Hearing from the date of receipt was 20 days.

During this fiscal year, the staff exceeded the scheduling expectation and scheduled hearings on an average within five calendar days, which is well below our target of seven calendar days.

Commitment #6: Courtesy

"Tribunal members will treat all participants in a hearing with courtesy and respect."

Questionnaires were sent after every hearing to every party, representative of a party and every participant during this fiscal year. These questionnaires provide feedback and assist the Tribunal to improve the hearing processes. The questionnaires include questions relating explicitly to the conduct and performance of the Tribunal members during the hearing process. Although the number of questionnaires received by the Tribunal has decreased this fiscal year, the Tribunal maintained a score of 94% relating to member courtesy. The decrease in questionnaires returned to the Tribunal could be due to the parties that regularly appear before the Tribunal or Hearing Office and choose not to respond. These parties may find it repetitive to complete the questionnaires after every hearing when there is no new information to report.

The Tribunal has a formal policy and process for complaints received from the parties or the public concerning its members. The Tribunal received one complaint this fiscal year and the Tribunal adhered to its complaints policy.

Commitment #7: Decisions

"Tribunal members will render timely decisions."

Legislation requires that all recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on development permit applications are made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Of the total cases that went to a hearing and a decision was rendered, 41% of the decisions were rendered under 30 days.

Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. The Hearing Office received one plan amendment application during this fiscal year. The decision was rendered 62 days after final submissions were filed.

Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal has determined that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members endeavour to render their decisions within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

For the purposes of this performance measure, the commitment has been defined as *"Decisions will be rendered within 30 days of final argument, excepting hearings with legislative timelines."* For the fiscal year 2004-2005, the timeliness of decisions rendered was captured for the decisions rendered for appeals under the *Environmental Protection Act,* the *Ontario Water Resources Act* and the *Safe Drinking Water Act*. There were no appeals under the *Pesticides Act* or the *Nutrient Management Act, 2002* or applications under the *Environmental Assessment Act,* the *Environmental Protection Act* and the *Ontario Water Resources Act*. In 55% of these cases, members released their decisions within 30 days of the final argument. Since this figure is below the 90% performance measure, the Tribunal reviewed the cases where the performance measure was not met. Given the complexity of the cases a more realistic target was established for the next fiscal year. The Tribunal remains committed to timely decisions. In this fiscal year, the Tribunal continued to provide regular in-house training sessions for all its members.

Commitment #8: Training of Members

"Training of Members."

Members are trained in the process and conduct of hearings, knowledge of legislation and Tribunal Rules, decision writing and mediation. New members receive one-on-one training

regarding the legislation, conduct of hearings, the Tribunal Rules, Guidelines and Rules of Practice and decision writing from in-house staff. Members attend training courses on adjudication and decision writing conducted by the Society of Ontario Adjudicators and Regulators, as well as the five day course on alternative dispute resolution offered by Stitt, Feld, Handy. Members received training by attending hearings, first as an observer, then as a member of a hearing panel and finally conducting hearings independently.

Members who have not had previous Tribunal experience should be able to conduct a hearing independently within one year of their appointment. In this fiscal year, the Tribunal had two more members who had reached this one-year threshold. The Tribunal strengthened its training for full-time members and included three sessions on legislation and ethics in its Learning Program. The Tribunal will continue to provide in-house training as part of its Learning Program in the next fiscal year. The Learning Program is outlined in Appendix D.

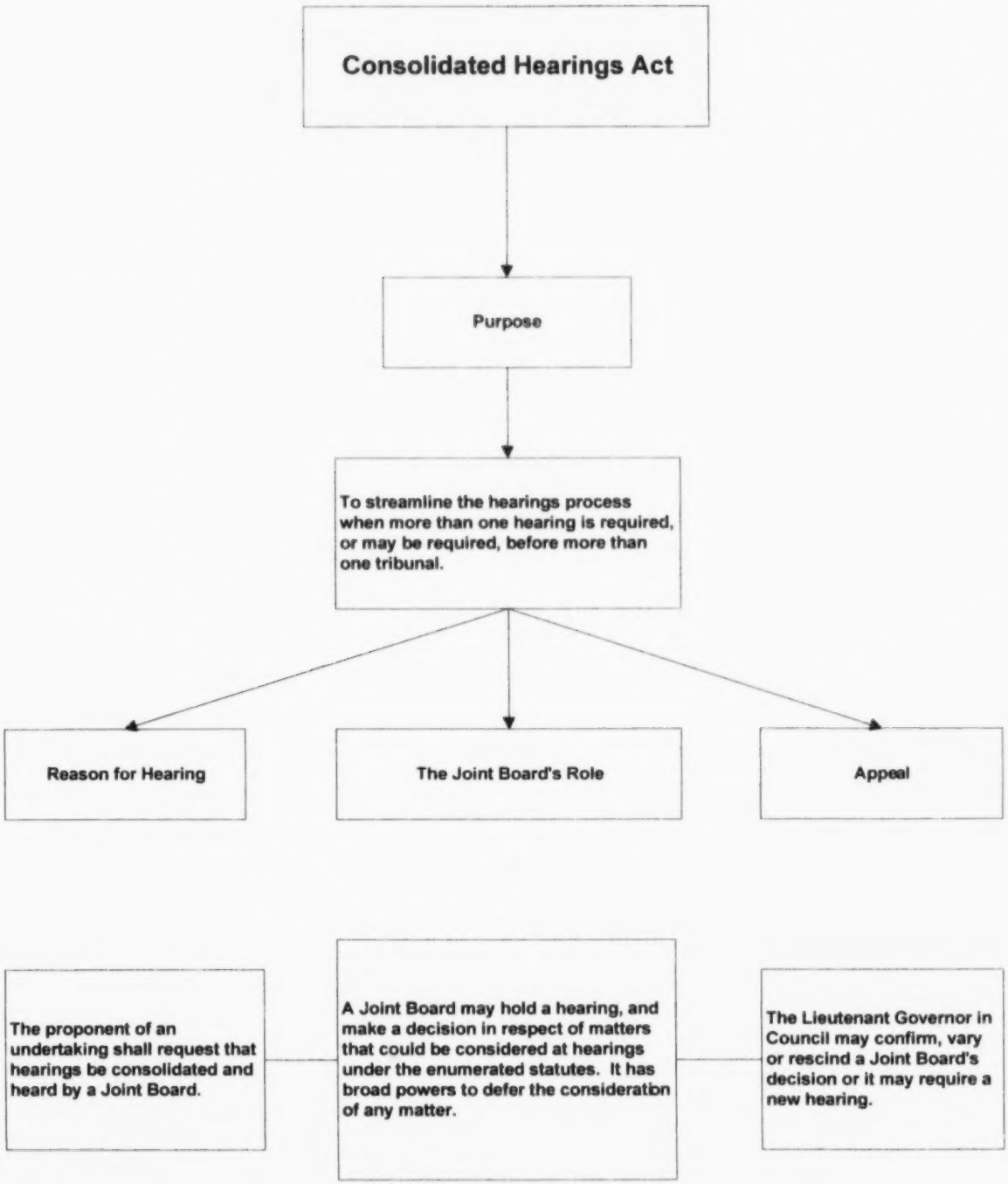
Commitment #9: Appeals and judicial review of Tribunal Decisions

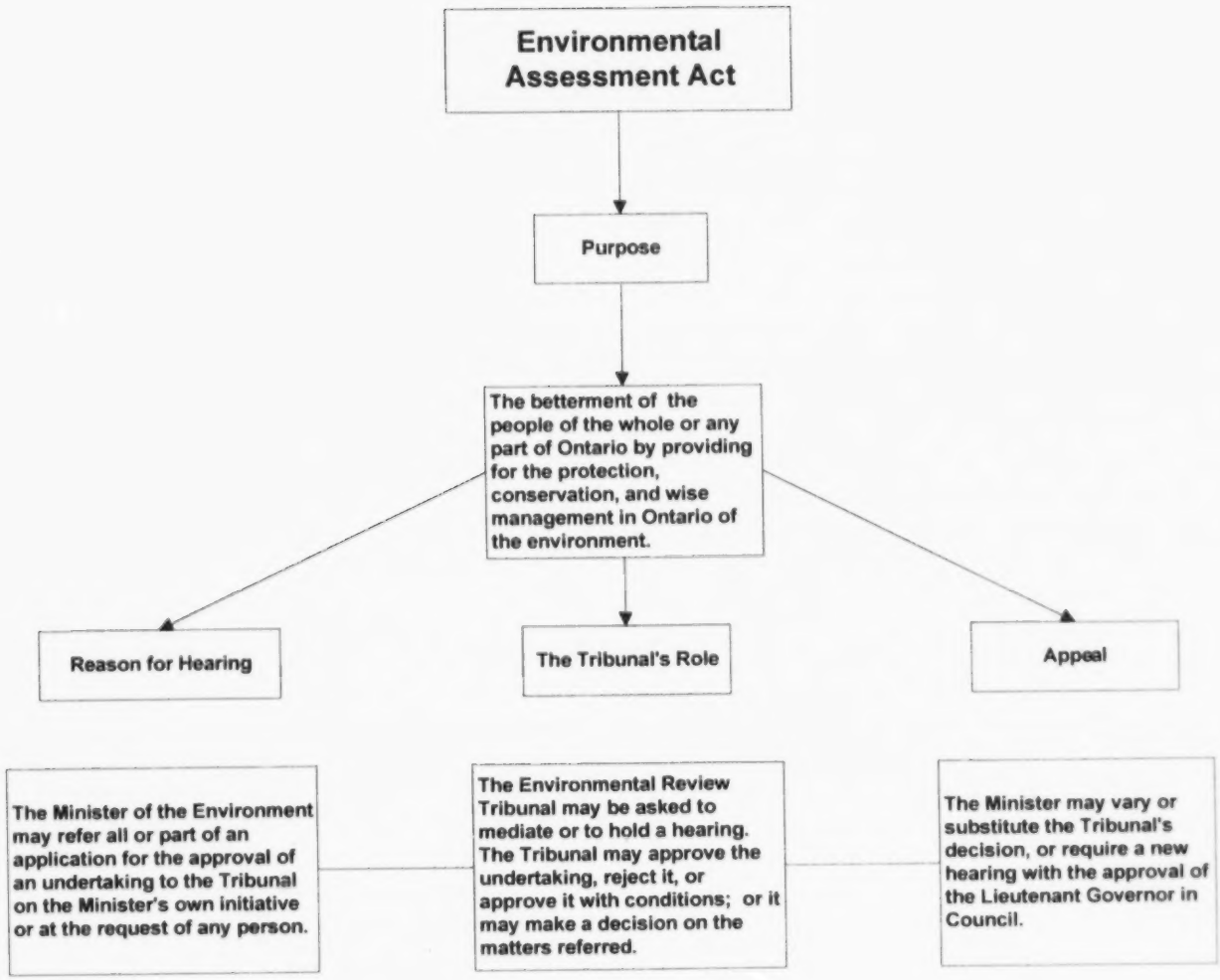
"Appeals and judicial review of Tribunal Decisions."

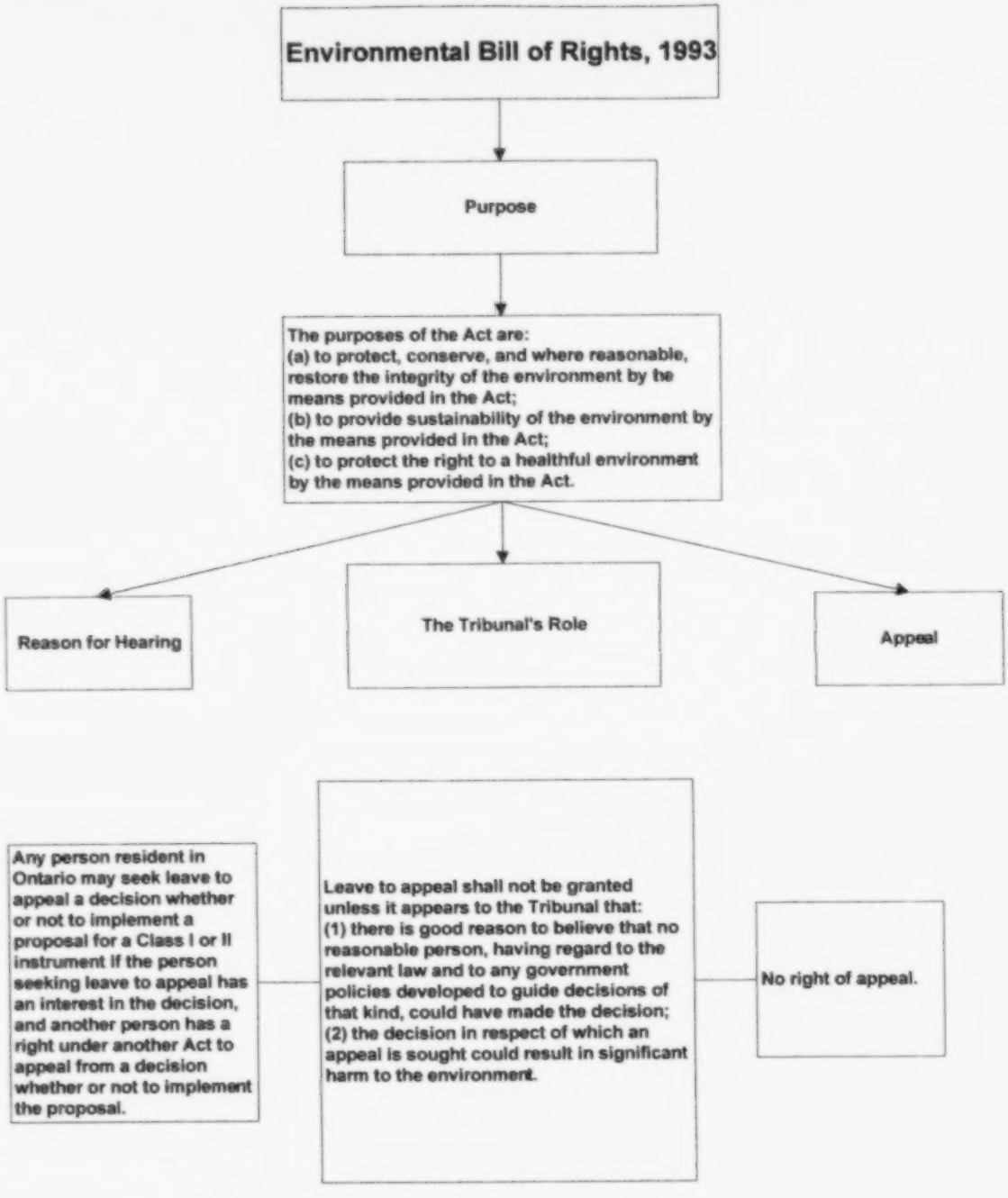
The Tribunal has committed to report on the outcome of any appeal or judicial review applications of its decisions. This fiscal year, the Tribunal received two decisions and has reported on those decisions in this Annual Report under Summaries of Appeals of Decisions of the Tribunal.

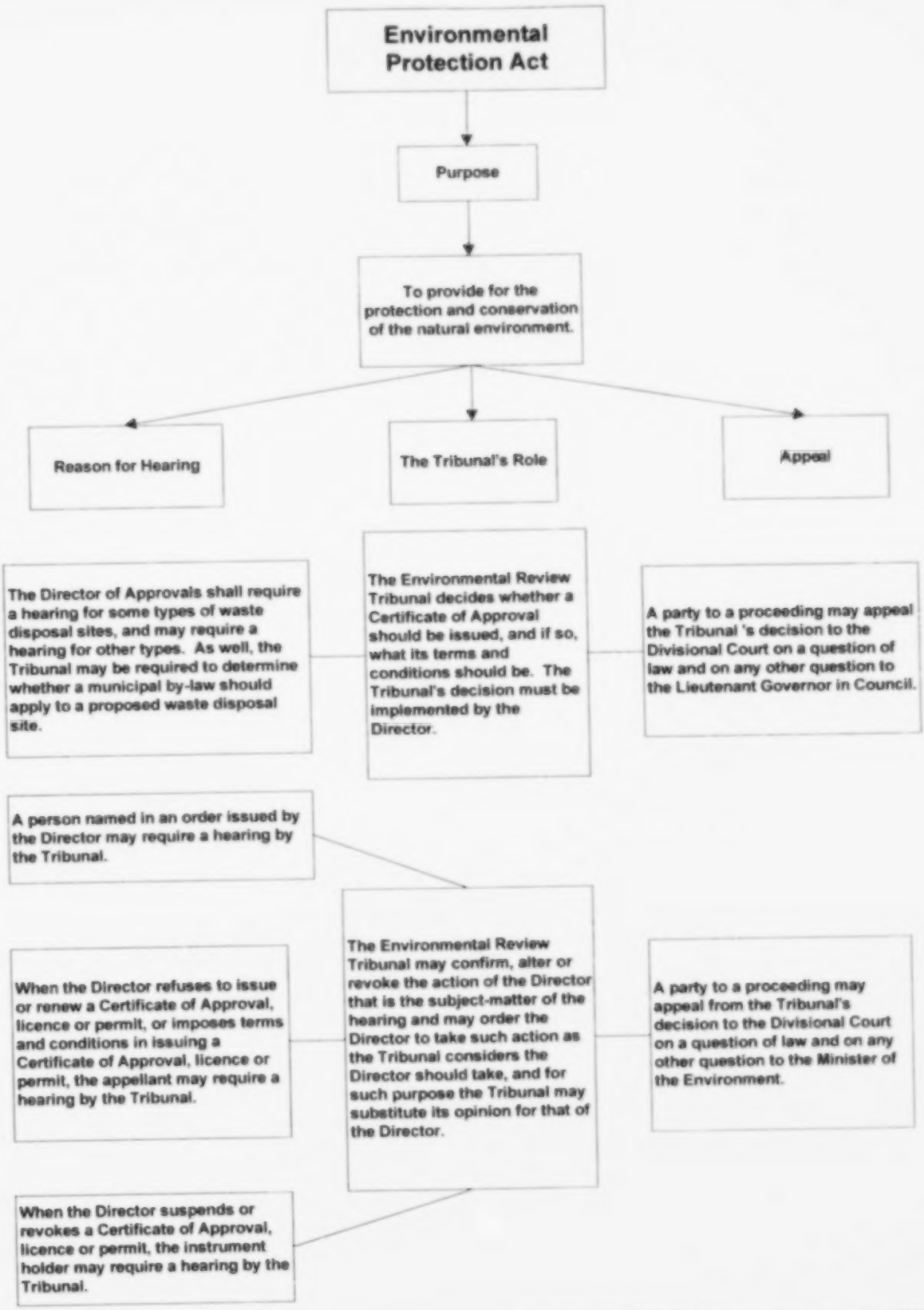
Appendix A

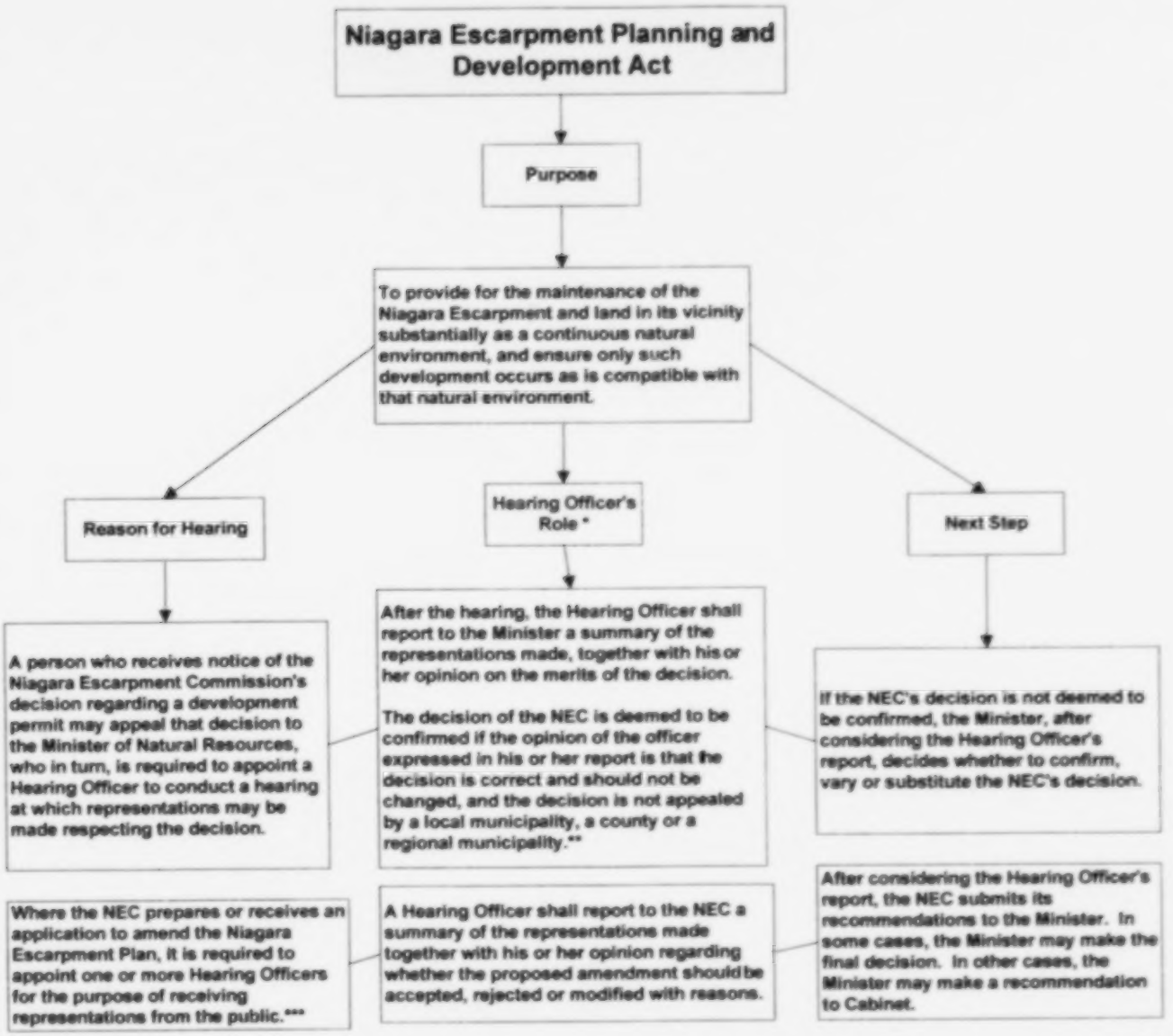
Overview of Relevant Legislation


Consolidated Hearings Act
Purpose
To streamline the hearings process when more than one hearing is required, or may be required, before more than one tribunal.
Reason for Hearing
The Joint Board's Role
Appeal
The proponent of an undertaking shall request that hearings be consolidated and heard by a Joint Board.
A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter.
The Lieutenant Governor in Council may confirm, vary or rescind a Joint Board's decision or it may require a new hearing.


Environmental Assessment Act
Purpose
The betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management in Ontario of the environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Minister of the Environment may refer all or part of an application for the approval of an undertaking to the Tribunal on the Minister's own initiative or at the request of any person.
The Environmental Review Tribunal may be asked to mediate or to hold a hearing. The Tribunal may approve the undertaking, reject it, or approve it with conditions; or it may make a decision on the matters referred.
The Minister may vary or substitute the Tribunal's decision, or require a new hearing with the approval of the Lieutenant Governor in Council.


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act;
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal.
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment.
No right of appeal.

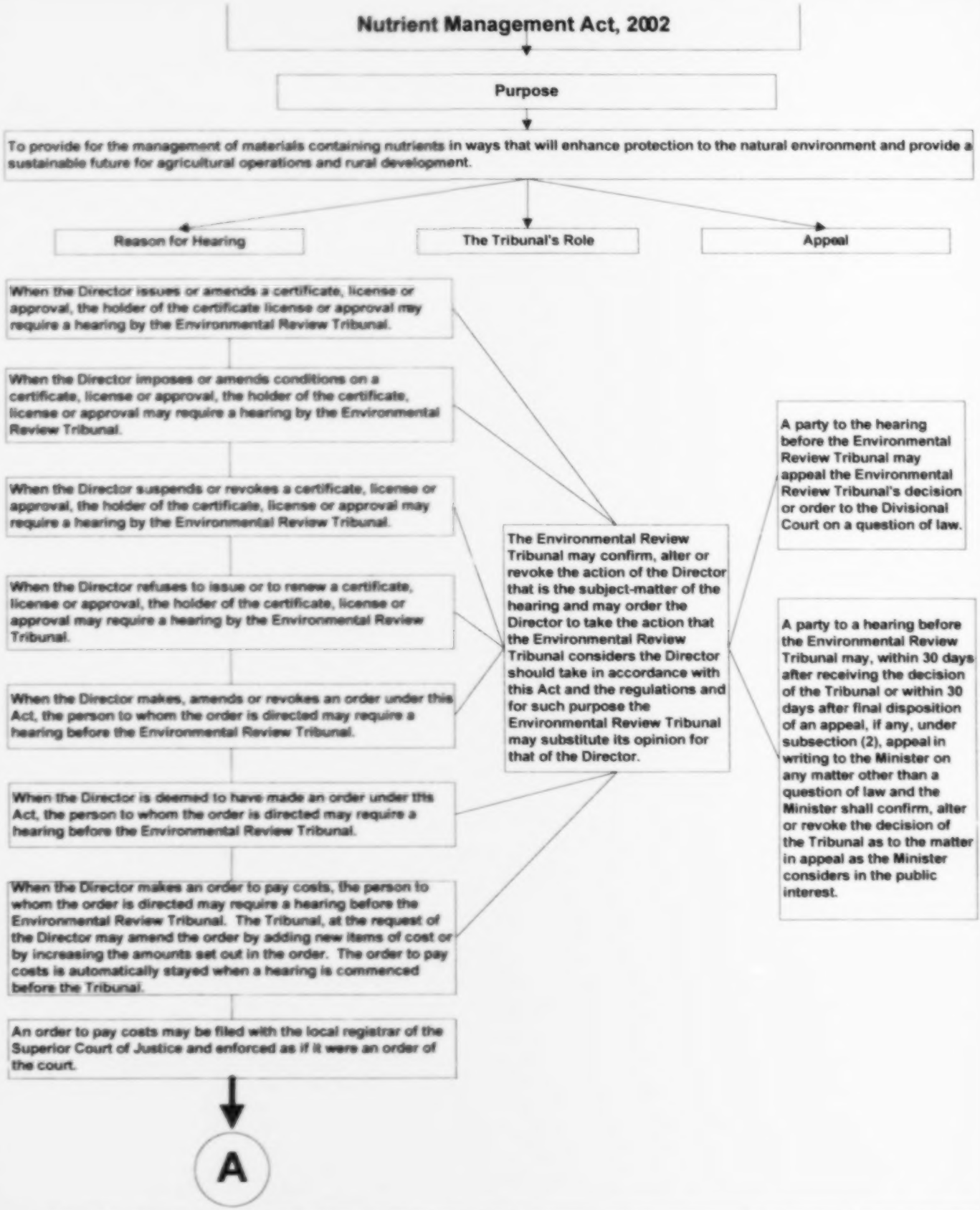

Environmental Protection Act
Purpose
To provide for the protection and conservation of the natural environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing for some types of waste disposal sites, and may require a hearing for other types. As well, the Tribunal may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.
The Environmental Review Tribunal decides whether a Certificate of Approval should be issued, and if so, what its terms and conditions should be. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal 's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew a Certificate of Approval, licence or permit, or imposes terms and conditions in issuing a Certificate of Approval, licence or permit, the appellant may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take, and for such purpose the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director suspends or revokes a Certificate of Approval, licence or permit, the instrument holder may require a hearing by the Tribunal.


Niagara Escarpment Planning and Development Act
Purpose
To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment.
Reason for Hearing
Hearing Officer's Role *
Next Step
A person who receives notice of the Niagara Escarpment Commission's decision regarding a development permit may appeal that decision to the Minister of Natural Resources, who in turn, is required to appoint a Hearing Officer to conduct a hearing at which representations may be made respecting the decision.
After the hearing, the Hearing Officer shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.
The decision of the NEC is deemed to be confirmed if the opinion of the officer expressed in his or her report is that the decision is correct and should not be changed, and the decision is not appealed by a local municipality, a county or a regional municipality.**
If the NEC's decision is not deemed to be confirmed, the Minister, after considering the Hearing Officer's report, decides whether to confirm, vary or substitute the NEC's decision.
Where the NEC prepares or receives an application to amend the Niagara Escarpment Plan, it is required to appoint one or more Hearing Officers for the purpose of receiving representations from the public.***
A Hearing Officer shall report to the NEC a summary of the representations made together with his or her opinion regarding whether the proposed amendment should be accepted, rejected or modified with reasons.
After considering the Hearing Officer's report, the NEC submits its recommendations to the Minister. In some cases, the Minister may make the final decision. In other cases, the Minister may make a recommendation to Cabinet.

*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

**Since the proclamation of the Red Tape Reduction Act, 2000, S.O. 2000, c. 26 amendments to the NEPDA, deemed confirmations can also occur where the parties have reached a settlement on the conditions of the development permit. The decision of the NEC may be deemed confirmed prior to going to the Minister if (a) the decision was to issue a development permit; (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit, and these are set out in the Hearing Officer's report; and (c) it is the Hearing Officer's opinion in the report that the decision to issue the development permit with the agreed terms and conditions would be correct and should not be changed.

***Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.

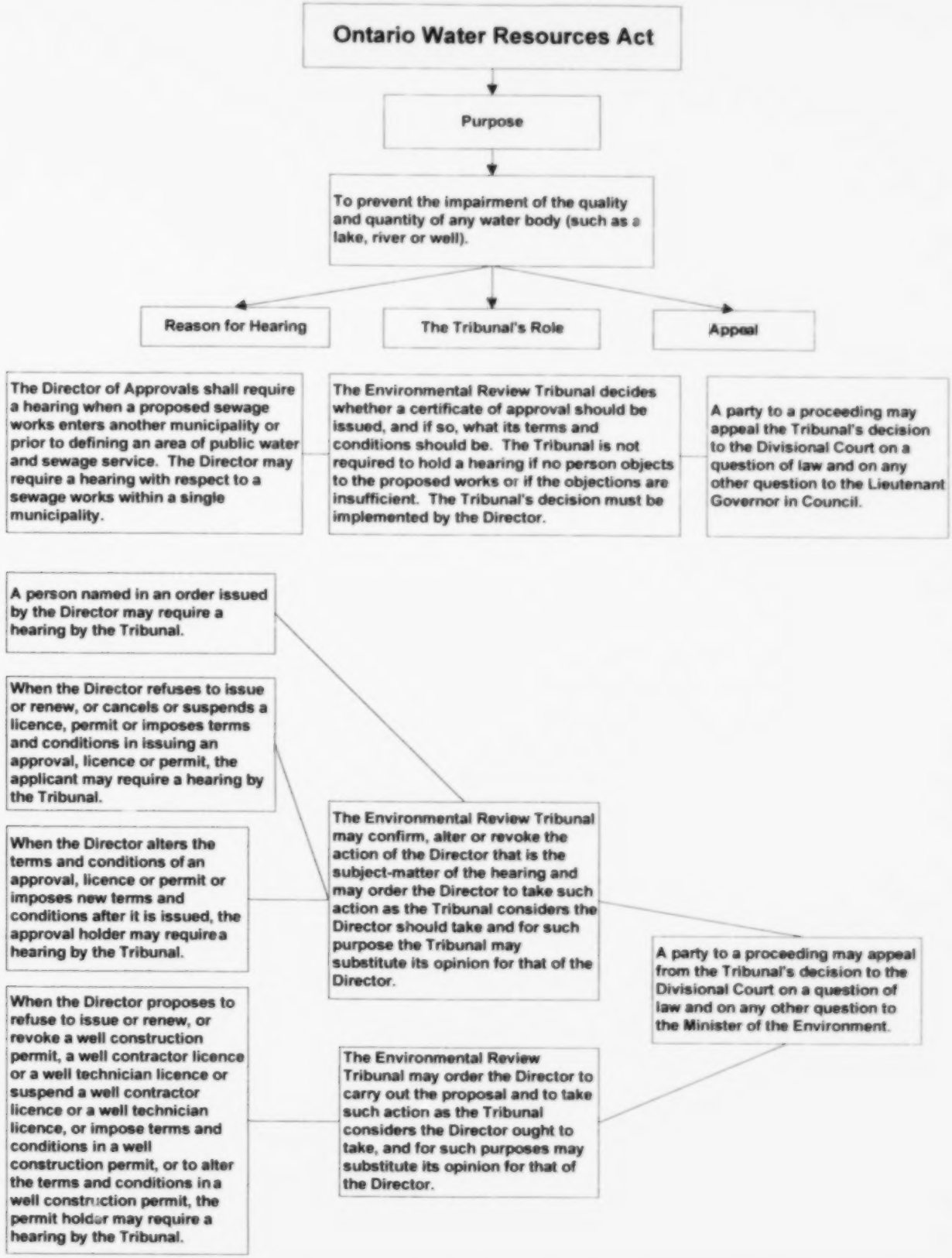

Nutrient Management Act, 2002
Purpose
To provide for the management of materials containing nutrients in ways that will enhance protection to the natural environment and provide a sustainable future for agricultural operations and rural development.
Reason for Hearing
The Tribunal's Role
Appeal
When the Director issues or amends a certificate, license or approval, the holder of the certificate license or approval may require a hearing by the Environmental Review Tribunal.
When the Director imposes or amends conditions on a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director suspends or revokes a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director refuses to issue or to renew a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director makes, amends or revokes an order under this Act, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal.
When the Director is deemed to have made an order under this Act, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal.
When the Director makes an order to pay costs, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal. The Tribunal, at the request of the Director may amend the order by adding new items of cost or by increasing the amounts set out in the order. The order to pay costs is automatically stayed when a hearing is commenced before the Tribunal.
An order to pay costs may be filed with the local registrar of the Superior Court of Justice and enforced as if it were an order of the court.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take the action that the Environmental Review Tribunal considers the Director should take in accordance with this Act and the regulations and for such purpose the Environmental Review Tribunal may substitute its opinion for that of the Director.
A party to the hearing before the Environmental Review Tribunal may appeal the Environmental Review Tribunal's decision or order to the Divisional Court on a question of law.
A party to a hearing before the Environmental Review Tribunal may, within 30 days after receiving the decision of the Tribunal or within 30 days after final disposition of an appeal, if any, under subsection (2), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Tribunal as to the matter in appeal as the Minister considers in the public interest.
A

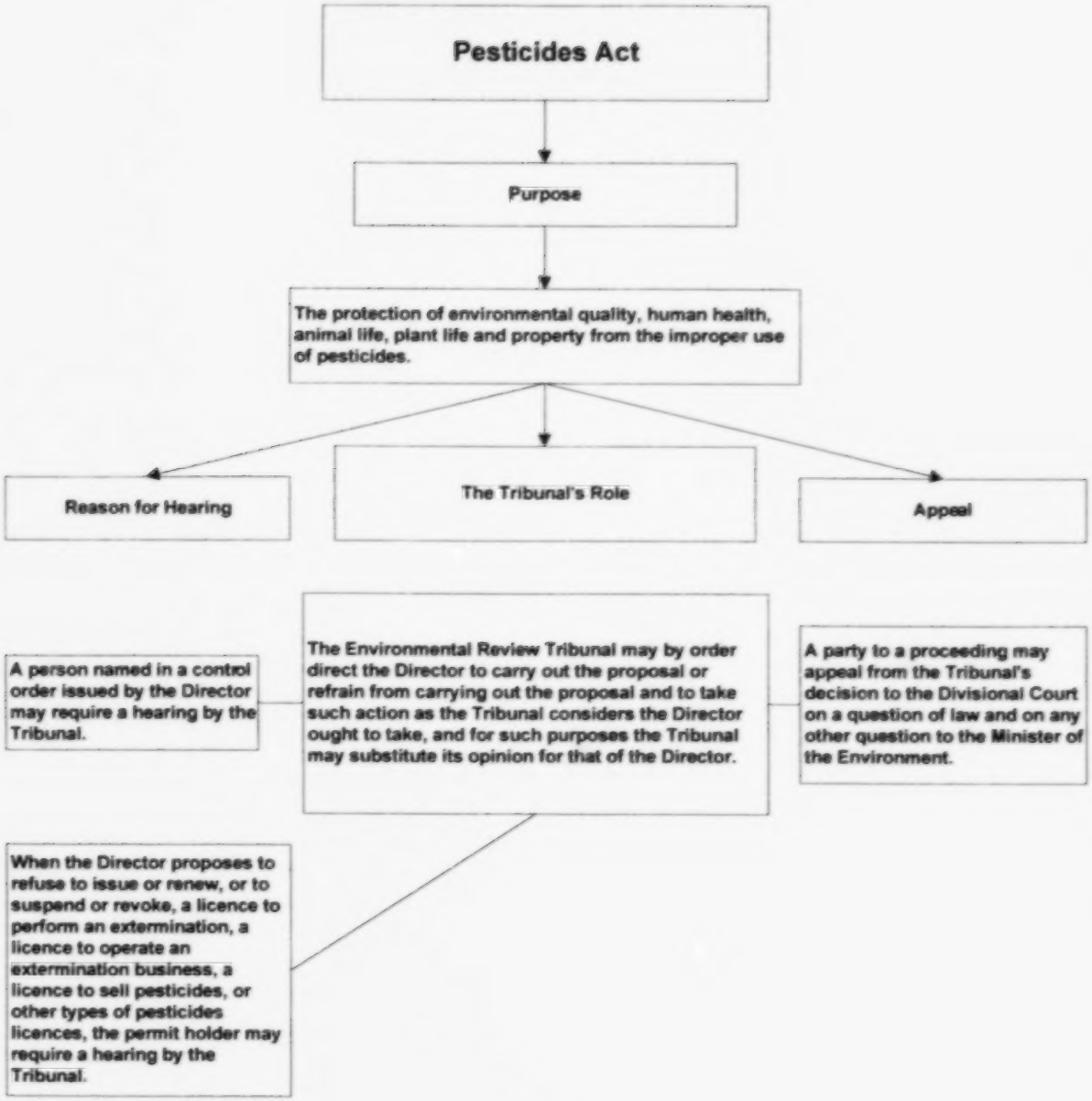
Administrative Penalties:

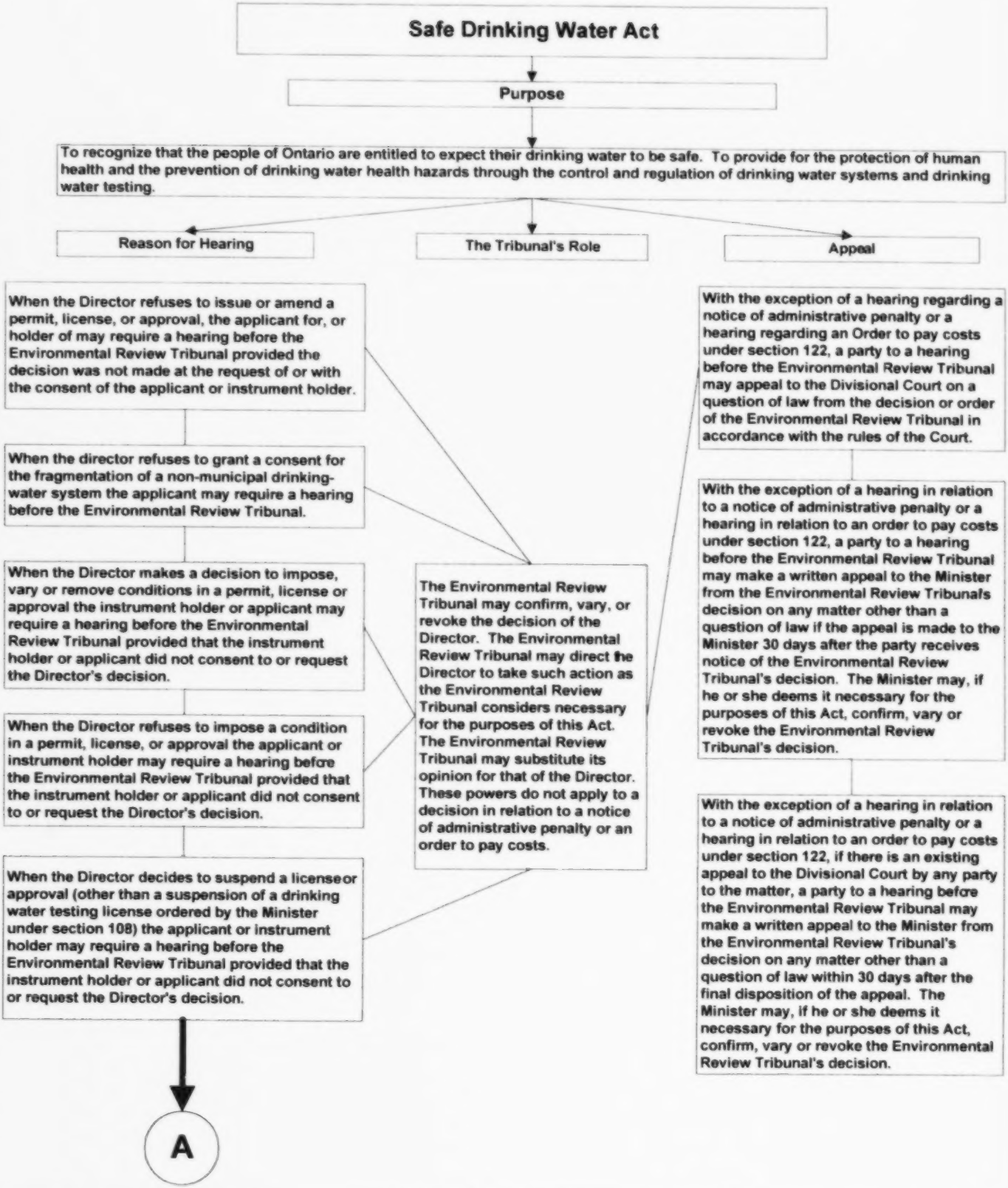
When a Director is of the opinion that a person has contravened a provision of the Act or regulations, failed to comply with an Order under the Act (other than an Order to pay costs), or has failed to comply with a condition of a certificate, license or approval, the Director may issue a notice in writing requiring the person to pay an administrative penalty. The person to whom the order is directed, may require a hearing before the Environmental Review Tribunal.

The Environmental Review Tribunal may confirm, rescind or amend the notice according to what the Environmental Review Tribunal considers reasonable in the circumstances, but the Environmental Review Tribunal shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

A party to a hearing before the Environmental Review Tribunal may, within 30 days after receiving the decision of the Tribunal or within 30 days after final disposition of an appeal, if any, under subsection (2), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Tribunal as to the matter in appeal as the Minister considers in the public interest.


Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, the applicant may require a hearing by the Tribunal.
When the Director alters the terms and conditions of an approval, licence or permit or imposes new terms and conditions after it is issued, the approval holder may require a hearing by the Tribunal.
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit holder may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director.
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides.
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal.
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal.


Safe Drinking Water Act
Purpose
To recognize that the people of Ontario are entitled to expect their drinking water to be safe. To provide for the protection of human health and the prevention of drinking water health hazards through the control and regulation of drinking water systems and drinking water testing.
Reason for Hearing
The Tribunal's Role
Appeal
When the Director refuses to issue or amend a permit, license, or approval, the applicant for, or holder of may require a hearing before the Environmental Review Tribunal provided the decision was not made at the request of or with the consent of the applicant or instrument holder.
When the director refuses to grant a consent for the fragmentation of a non-municipal drinking-water system the applicant may require a hearing before the Environmental Review Tribunal.
When the Director makes a decision to impose, vary or remove conditions in a permit, license or approval the instrument holder or applicant may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director refuses to impose a condition in a permit, license, or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director decides to suspend a license or approval (other than a suspension of a drinking water testing license ordered by the Minister under section 108) the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
The Environmental Review Tribunal may confirm, vary, or revoke the decision of the Director. The Environmental Review Tribunal may direct the Director to take such action as the Environmental Review Tribunal considers necessary for the purposes of this Act. The Environmental Review Tribunal may substitute its opinion for that of the Director. These powers do not apply to a decision in relation to a notice of administrative penalty or an order to pay costs.
With the exception of a hearing regarding a notice of administrative penalty or a hearing regarding an Order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may appeal to the Divisional Court on a question of law from the decision or order of the Environmental Review Tribunal in accordance with the rules of the Court.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunals decision on any matter other than a question of law if the appeal is made to the Minister 30 days after the party receives notice of the Environmental Review Tribunal's decision. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, if there is an existing appeal to the Divisional Court by any party to the matter, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law within 30 days after the final disposition of the appeal. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
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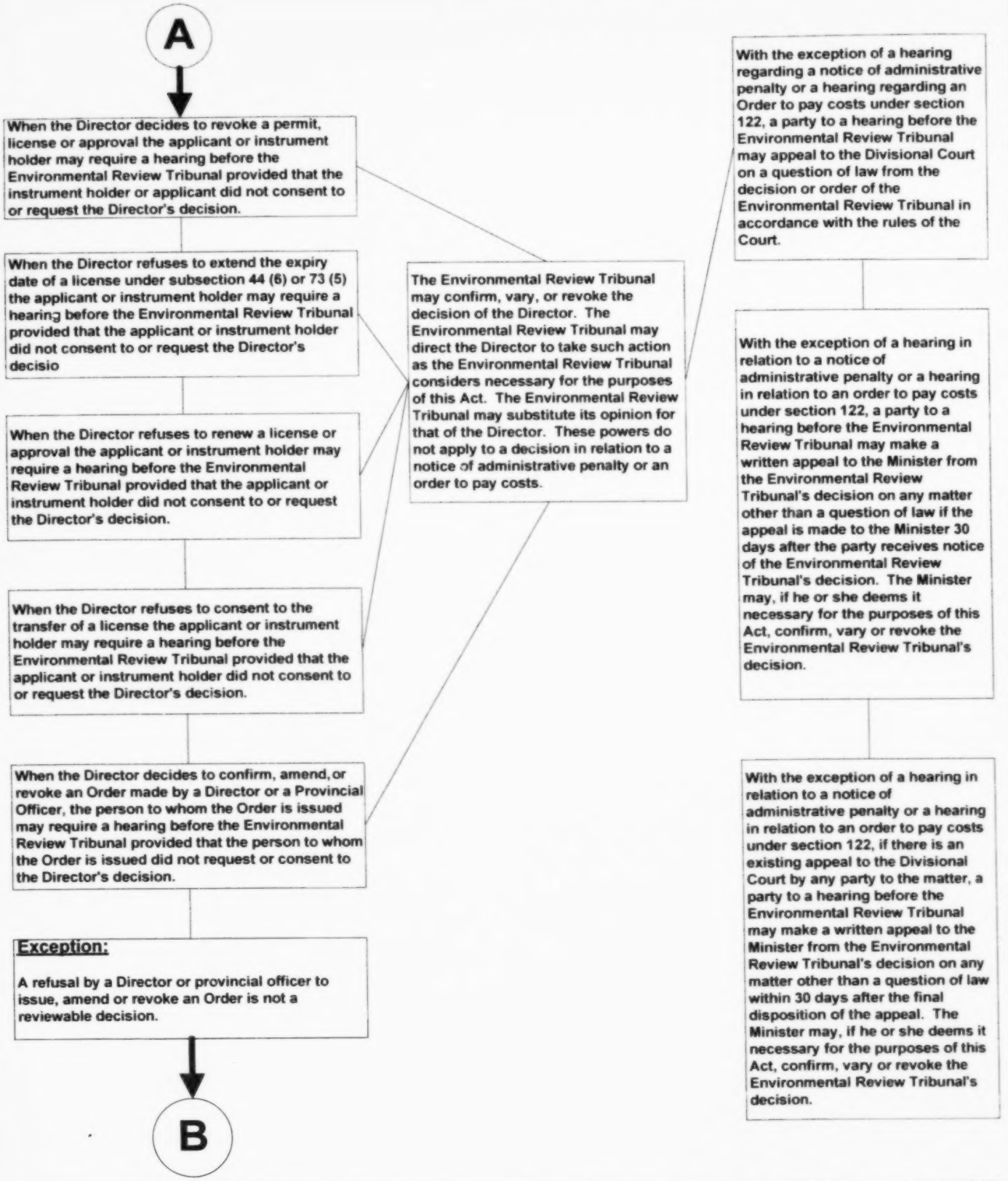
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When the Director decides to revoke a permit, license or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director refuses to extend the expiry date of a license under subsection 44 (6) or 73 (5) the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decisio
When the Director refuses to renew a license or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decision.
When the Director refuses to consent to the transfer of a license the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decision.
When the Director decides to confirm, amend, or revoke an Order made by a Director or a Provincial Officer, the person to whom the Order is issued may require a hearing before the Environmental Review Tribunal provided that the person to whom the Order is issued did not request or consent to the Director's decision.
Exception:
A refusal by a Director or provincial officer to issue, amend or revoke an Order is not a reviewable decision.
B
The Environmental Review Tribunal may confirm, vary, or revoke the decision of the Director. The Environmental Review Tribunal may direct the Director to take such action as the Environmental Review Tribunal considers necessary for the purposes of this Act. The Environmental Review Tribunal may substitute its opinion for that of the Director. These powers do not apply to a decision in relation to a notice of administrative penalty or an order to pay costs.
With the exception of a hearing regarding a notice of administrative penalty or a hearing regarding an Order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may appeal to the Divisional Court on a question of law from the decision or order of the Environmental Review Tribunal in accordance with the rules of the Court.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law if the appeal is made to the Minister 30 days after the party receives notice of the Environmental Review Tribunal's decision. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, if there is an existing appeal to the Divisional Court by any party to the matter, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law within 30 days after the final disposition of the appeal. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.

B
When the Director decides to issue an Order, including an Order to pay costs under section 122, the person to whom the Order is issued may require a hearing before the Environmental Review Tribunal provided that the person to whom the Order is issued did not request or consent to the Director's decision. There is an automatic stay of the order once a proceeding is commenced before the Tribunal.
When the Environmental Review Tribunal is conducting a hearing in relation to a decision of the Director to make an Order to pay costs, the Environmental Review Tribunal may only confirm, vary or revoke the decision. The Tribunal can, in certain circumstances, grant the Director's request to add new items of costs or to increase the amounts set out in the order.
An order to pay costs may be filed with the Superior Court of Justice and enforced as if it were an Order of the Court.
When the Director decides to issue a notice of administrative penalty under section 121, the recipient may requirea hearing before the Environmental Review Tribunal. (automatic stay).
When the Environmental Review Tribunal is conducting a hearing regarding a decision to issue a notice of administrative penalty, the Environmental Review Tribunal may confirm or revoke the decision or vary the decision, but not so as to vary the amount of the penalty unless it considers the amount to be unreasonable.

Appendix B

Profile of Tribunal Members

Chair

Toby Vigod *(appointment expires June 1, 2008)*

- Appointed as Chair in June 2005
- Appointed as a Vice-Chair in December 2004
- Manager, Federal/Provincial/Territorial Relations and Co-Manager, National Secretariat, Climate Change Secretariat, Ottawa (2000-2004)
- Chair, Environmental Appeal Board and Forest Appeals Commission, British Columbia (1996-2000)
- Assistant Deputy Minister, Department of Policy, Planning and Legislation, Ministry of Environment, Lands and Parks, British Columbia (1994-1996)
- Commissioner, Commission on Planning and Development Reform in Ontario (1991-1993)
- Sessional Lecturer, Queen's University, Faculty of Law (1985-1991, 1993); University of Toronto, Faculty of Law (1991 and 1992); Osgoode Hall Law School (1993); Queen's School of Public Administration (1990 and 1991); Department of Geography, Ryerson University (2005)
- Counsel (1980-1993) and Executive Director (1986-1993), Canadian Environmental Law Association
- Called to the Ontario Bar (1980)
- B.A. (History Specialist) University of Toronto (1973) and LL.B Queen's University (1977)
- Member of a number of federal and Ontario environmental law reform committees; written extensively in the areas of environmental law and policy

Ian McPhail *(appointment expired December 17, 2004)*

- Chair, Environmental Review Tribunal (December 2001-December 2004)
- Chair, Alcohol & Gaming Commission of Ontario (2000-2001)
- Director and Vice-Chair, Ontario Educational Communications Authority (TV Ontario) (1996-2000)
- Acting Chair, Ontario Educational Communications Authority (TV Ontario) (1999)
- Chair, Toronto Grace Hospital (1988-1995)
- Appointed federal Queen's Counsel (1992)
- Called to the Ontario Bar (1972)
- Private Law Practice in Toronto (1972-1999)
- Vice-President, Toronto Chinese Community Services Association, and the Sino-Canadian Arts Studies Inc.
- Member, Champlain Society, Empire Club of Canada, Cabbagetown South Association, and other community associations

Vice-Chairs

Norman A. Crawford *(appointment expires July 30, 2006)*

- Appointed as a Vice-Chair in July 2003
- Appointed as a member of the Ontario Municipal Board from August 2002 to July 2003
- A lawyer since 1972, he is a graduate of Osgoode Hall Law School and practised in both the public and the corporate and private sectors
- Prior to his appointment to the OMB, he carried on a general law practice in Kitchener

Knox M. Henry *(appointed "At Pleasure")*

- Acting Chair (December 2004-May 2005)
- Appointed as a Vice-Chair in 1991
- Member, Environmental Appeal Board (1978-1991)
- Member, Pesticides Appeal Board (1975-1978)
- Cross-appointed as member of the Ontario Rental Housing Tribunal (1999-2003)
- Cross-appointed as a Deputy Mining and Lands Commissioner (1995-1997)
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges

Donald R. Martyn *(appointment expires April 24, 2006)*

- Appointed as a Vice-Chair since April 2003
- Taught at the Toronto Board of Education, York University and University of Toronto
- Government of Ontario – Executive Officer to Premier Robarts and Executive Director for the Ministry of Community and Social Services
- Consultant to business, associations, and to all four levels of government – strategic planning and program value for expenditure
- Former Chair of the Georgina Committee of Adjustment and member of Planning Board
- Member of Lake Simcoe Conservation Authority
- Past Chair of the Royal Commonwealth Society
- Governor of Machachlan College, Oakville
- Master of Arts (University of Toronto)

Bill Balfour *(appointment expired May 5, 2004)*

- Appointed as a Vice-Chair in August 2001
- Appointed as a part-time member in 1999
- BASc in Civil Engineering and MBA from University of Toronto
- OLS (Ontario Land Surveyor) License; Certificate in Financial Planning from Sheridan College
- Principal, Gartner Lee Ltd, Environmental Consultants, (1989-2001)
- Supervisor, Recreational Lakes Program; District Manager for Muskoka, Haliburton and Parry Sound; Coordinator Regional Operations and Laboratories; Director, Approvals

and Land Use Planning, Ontario Government (Ministries of Health and Environment), (1970-1989)
- Consulting Engineer with Marshall Macklin Monaghan from 1965 to 1970

Chris Braney *(appointment expired February 26, 2005)*
- Appointed as a Vice-Chair in February 2002
- Member, Ontario Rental Housing Tribunal (1999–2002)
- Director of Marketing for a Toronto-based aerospace company (1997-1999)
- President, West Hill Community Services (1998 – present)
- Vice-Chair, Scarborough Board of Education (1994-1997)
- President and owner of a health and safety products company specializing in hazardous cleanup projects (1990-1997)
- Vice-President, Centennial Community and Recreation Association (1992–1994)
- Director, Variety Club Telethon and Variety Club Tent 28 member (1994-present)
- City of Scarborough Archival and Records Committee (1995-1997); Budget and Woman's Issues Committees for the Scarborough Board of Education (1994 -1997)
- Studied Marketing Management at Centennial College

Pauline Browes *(appointment expired January 3, 2005)*
- Appointed as a Vice-Chair in October 1995
- Member, Board of Directors, La Jeunesse Youth Orchestra, Northumberland Country (2001)
- Founder and Curator of the "Spirit of Canada" Art Gallery at Rice Lake, Ontario (1999)
- Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member, Board of Governors, Scarborough Hospital (1994-1999)
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State – Employment and Immigration (1993); Minister of State – Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Chair and member of the Scarborough Board of Health (1981-1983)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)

Part-time Members

Gary A. Harron *(appointment expires March 11, 2006)*
- Appointed as a member in 2003 and a resident of Allenford, Ontario
- Graduated from the University of Guelph
- Owns and operates a 400 acre beef farm
- Member of the Ontario Municipal Board (1982 to 2004)

- Member of the Niagara Escarpment Commission (1973 to 1982)
- Several years municipal government experience as a member, Reeve and Warden
- Former executive in the insurance business
- Recipient of the Canadian Commemorative Medal on the 125th Anniversary of Confederation and the recipient of the Ontario Bicentennial Medal

Franco R. Mariotti *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Whitefish, Ontario
- He has traveled widely in North and South America, Iceland, and the Galapagos
- A founder of the Sudbury Naturalists' Club; active in social and environmentally-concerned groups
- A Biologist/Staff Scientist at Science North and manager of its Biosphere Exhibit since 1981

George W. Ozburn *(appointed "At Pleasure")*

- Appointed as a member in 1975 and a resident of Thunder Bay, Ontario
- Bachelor of Science degree in Agriculture (McGill); spent a year studying at Imperial College of Science and Technology in London (UK) prior to receiving his Ph.D. (Entomology and Toxicology) from McGill University, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- Worked in pesticide research for three years in West Africa followed by a university appointment in Michigan
- For many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- As Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

David A. B. Pearson *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Sudbury, Ontario
- Professor of Earth Sciences at Laurentian University
- Involved in research concerning lake water quality; leader of the Urban Lakes section of the Co-operative Fresh Water Ecology Unit at the university
- Took leave to be Project Director during the development of Science North 1980-1986, where he continues as Associate Director
- Past host of "Down to Earth" and "Understanding the Earth" TV series, and "Radio Lab" on CBC Northern Ontario Radio

Mary C. Schwass *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Tara, Ontario
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

Appendix C

Learning Program		
Date	**Topic**	**Presenters/Visitors**
April 23, 2004	**The Natural Assets of the Niagara Escarpment and the Oak Ridges Moraine**	Steve Varga, Biologist, Ministry of Natural Resources; Doug Morrison, Senior Mining Consultant, Golder Ltd.
April 26, 2004	**In-house training session: Review of *Safe Drinking Water Act***	Mike Nicol, Counsel, Environmental Review Tribunal
April 28, 2004	**Visitation from Ukraine**	Serhii Bevz, Head, Directorate of Investments and International Co-operative State Committee of Ukraine for Energy Conservation
June 25, 2004	**Visitation from Australia**	Gregory Koppenol, President Queensland Land and Resources Tribunal
July 26, 2004	**In-house training session: Ethics**	Mike Nicol, Counsel, Environmental Review Tribunal
September 30, October 6, and 27, 2004	**In-house training session: *NEPDA*, *Pesticides Act***	Mike Nicol, Counsel, Environmental Review Tribunal
October 22, 2004	**Tour of the Ganaraska Region by the Conservation Authority**	Mark V. Peacock, Watershed Services Co-ordinator, Rob Franklin, Watershed Planner, Ken Toole, Watershed Ecologist, Ganaraska Region Conservation Authority

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2005-2006

For more information on the Tribunal's performance goals and objectives refer to the Business Plan for 2005-2008.

1. Pre-Hearings, Hearings a Decision Making Core Function:

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #1: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To continue to provide Questionnaires to hearing participants and monitor respect and courtesy by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #2: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 60 days of final arguments, excepting hearings with legislated timelines and hearings under the *Consolidated Hearings Act*.	In 80% of all hearings held, Tribunal members will adhere to the target.

Commitment #3: Training of Tribunal Members.	All Members will receive adequate training to conduct hearings, write decisions and, in some cases, conduct mediation sessions.	Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal Rules, decision writing and alternative dispute resolution.	New members without prior Tribunal experience are trained to conduct hearings independently within one year of appointment. All members will receive ongoing training regarding the Tribunal's legislation, Rules of Practice and administrative policies. The Tribunal will continue to conduct its learning program designed to enlighten members on environmental issues and administrative law.
Commitment #4: Offer pre-hearing conferences in appeals under the *NEPDA** and schedule preliminary hearings in all other appeals and applications, prior to the commencement of the hearing. **Niagara Escarpment Planning and Development Act*	When all parties agree to participate, pre-hearing conferences for matters under the *NEPDA** will be held and for all other appeals and applications, preliminary hearings will be held, at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving pre-hearing conferences.	Continue to offer pre-hearing conferences in every matter under the *NEPDA** and preliminary hearings in all other appeals and applications. Questionnaires will be sent to all parties at the completion of the *NEPDA** pre-hearing conference to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services. The Tribunal will monitor the success of pre-hearing con-

			ferences by tracking the cases that are resolved prior to the hearing.
Commitment #5: Report on appeals and judicial review of Tribunal Decisions.	The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.	Review and analyze the outcome of any appeal of its decisions or judicial review applications.	The Tribunal will summarize any decision on appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.

2. Staff Processing of Hearings
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #6: Improve Timeliness in Scheduling Hearings.	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the filing date of the application/appeal and 7 calendar days from the date the Tribunal receives all required information/ documentation from the parties.	Staff will adhere to the target.

3. Mediation
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #7: Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the process and assist the Tribunal in improving its services. The Tribunal will monitor the success of mediation sessions by tracking the cases that are resolved prior to the hearing.

4. Public Access to the Tribunal
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2005-2006 Commitments
Commitment #8: The Tribunal will use its website to provide information and communicate with the public.	The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the	Continued increase in the use and efficiency of the site.	The information contained on the website will be reviewed and improvements made to

	number of visitors to the site to monitor its use.		ensure ease of use for the public. The website will be updated each business day. Any amendments to the Rules of Practice, Practice Directions and Guidelines, or publication of the Annual Report will be posted as approved.
Commitment #9: Guides will be updated.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.	Continued communication of the hearing process to the public.	To review and revise the guides as changes to governing legislation and policies arise.

Appendix E
Website Statistics – Downloads
During the period April 1, 2004 to March 31, 2005

Most Popular Downloads – Entire ERT Website:

Document	Downloads
Maurer et al. v. MOE (Decision released October 2, 2001)	2,889
Annual Reports	2,696
Guides	1,416
Tribunal's Rules of Practice	1,263
Ontario Water Resources Act	892
Tribunal's Guidelines	804
Tribunal's Practice Directions	699
Business Plans	649
Environmental Protection Act	623
Exolon-Esk Company of Canada Ltd. and Washington Mills Electro Minerals Corporation v. MOE (Decision released April 26, 2004)	508
Carsmetics Inc. and Jim Finley v. MOE (Decision released April 29, 2004)	480
Philip Services Inc. (Taro Landfill) v. MOE (Decision released April 8, 2004)	467
Lynda Lukasik and Zen Matwiyiw v. MOE (Decision released May 7, 2004)	403
Quantex Technologies Inc. v. MOE (Withdrawal letter released July 27, 2004)	398

Appendix F

Financial Report
2004-2005

General Account for the Operation of the Tribunal:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages[1]	$1,002,900	$ 969,000	$ 962,212
Transportation and Communications	97,500	97,100	55,328
Services	201,900	150,000	116,046
Supplies and Equipment	97,500	97,200	168,723
Total	$1,399,800	$1,313,300	$1,302,309

Additional Funds Allocated:
Safe Drinking Water Act

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communications	$ 0	$ 80,100	$ 307
Services	$ 410,000	$ 134,700	$ 5,902
Supplies and Equipment	$ 0	$ 0	$ 10,481
Total	$ 410,000	$ 214,800	$ 16,690

Nutrient Management Act

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communications	$ 0	$ 9,000	$ 0
Services	$ 61,300	$ 22,200	$ 0
Supplies and Equipment	$ 0	$ 0	$ 0
Total	$ 61,300	$ 31,200	$ 0

[1] Employee benefits are being managed centrally.

Appendix G

Contact Information

For further information about this report or the Environmental Review Tribunal contact:

The Tribunal Secretary
Environmental Review Tribunal
2300 Yonge Street, 12th floor
Toronto, ON M4P 1E4
Telephone: 416-314-4600
Fax: 416-314-4506
Email: **ERTTribunalsecretary@ert.gov.on.ca**

Website: www.ert.gov.on.ca